policy studies

#16

New economic legislation, 2000-2001

In this issue, we present our analysis of changes in economic legislation that took place over the last 12 months with regard to their influence on the business environment in Ukraine. Due to the lack of political consensus, the Verkhovna Rada has yet to adopt the key pieces of legislation that would ensure the integrity of the legislative environment in Ukraine, in particular, the new Tax Code, Customs Code, and Land Code. At the same time, significant moves have taken place in the legislative regulation of the financial sector, in the domain of product safety, in the administration of taxes, and in the sphere of intellectual property rights. However, we believe that these changes are not sufficient enough to boost economic growth.

October 2001

international centre for policy studies

Contents

Overview

In this issue, we present our analysis of changes in economic legislation that took place over the last 12 months with regard to their influence on the business environment in Ukraine. Due to the lack of political consensus, the Verkhovna Rada has yet to adopt the key pieces of legislation that would ensure the integrity of the legislative environment in Ukraine–the new Tax Code, Customs Code, and Land Code. At the same time, significant moves have taken place in the legislative regulation of the financial sector, in the domain of product safety, in the administration of taxes, and in the sphere of intellectual property rights. However, we believe that these changes are not sufficient enough to boost economic growth

Legislative acts are used as tools for the enforcement of state policy; therefore, the quality of laws depends on the quality of the policy. We believe that conflicts of interest between parties and the lack of a requirement for proper justification of legislative changes hamper the adoption of effective laws. As examples we can cite the delay in adoption of the new Civil Code, Customs Code, and Land Code.[1] Whereas these key documents, which are the pivots of national legislation, have not been adopted so far, the improvement of extant legislation has also stalled.

At the same time, an understanding of the vital need to develop the financial market infrastructure in order to deal with the growing economy did spur the adoption of framework laws for the financial sphere (see **Financial sector**). Over the past 12 months, the Verkhovna Rada has adopted the following essential laws for the financial sector: "On financial services and state regulation of financial services markets", "On payment systems and money transfers in Ukraine", "On the circulation of bills in Ukraine", and "On banks and banking activity".

Thanks to the clear definition of financial terms and types of financial services, market players' activities will become more and more transparent, and monitoring processes will become simpler. Concentration of authority concerning the regulation and monitoring of "non-banking and non-stock" financial services in the hands of one agency will enable the application of common regulatory principles, and that will reduce risks in the markets for these services.

Banking regulation will become more stable, thanks to the legislative consolidation of norms which heretofore were dispersed among various normative acts. The new Law "On banks and banking activity" implements a number of new approaches to bank regulation; in particular, it increases the NBU's authority regarding liquidation and the supervision of banking activities, strengthens the protection of clients' rights, and facilitates the business of banking.

The most important recent step in reforming the Ukrainian system of technical regulation and its conformity to European standards was the adoption on 17 May 2001 of the Laws of Ukraine "On standardisation", "On confirming compliance", and "On the accreditation of compliance assessment agencies" (see **Regulation of economic activity**). The positive side to these laws is that they set legal guarantees for securing the rights and lawful interests of business entities, and mechanisms of their protection, as

[1] Past analyses of changes in economic legislation made in 1998–1999 and 1999–2000 are presented in **Policy Studies** issues dated July–August 1999 and December 2000.

well as create opportunities for economic entities to choose alternative ways of conduct in order to adhere to legislative requirements.

At the same time, in the regulation of market activity, the following principles of licensing types of economic activity have been violated: adherence to a single list of types of economic activities that are subject to licensing; and adherence to a unified licensing procedure for these types of activities, stipulated by the Law "On licensing certain types of economic activity".

The most notable event in tax policy practice, despite the fact that the adoption of the Tax Code has not moved forward from its "dead stop", was the adoption of the Law "On the procedure for redeeming taxpayers' liabilities towards budgets and targeted funds" (see **Tax policy**). This law will promote a more effective and more transparent tax administration due to the detailed regulation of procedures which govern the interaction of taxpayers and tax administrations. At the same time, reducing the tax burden and equalising it among taxpayers remains a burning issue.

Table 1. Summary evaluation of changes in Ukrainian economic legislation over the last 12 months

Stimulated business activity	Restricted business activity
• Adoption of framework laws on the regulation of activities in the financial sector;	• Postponing the adoption of the Tax Code, Land Code, and Customs Code;
• Regulation of procedural relationships between taxpayers and tax agencies, implementation of procedures for administrative appeal regarding the actions of tax agencies;	• Delaying the adoption of the laws "On securities and the stock market", and "On joint-stock companies";
• Adoption of the set of laws in the sphere of technical regulation, which comply with the European standards;	• Introduction of holographic protection of documents and products that will increase the cost of doing business;
• Small-scale judicial reform that enhances opportunities to defend entrepreneurs' rights in court;	• Increase of the overall tax burden caused by the introduction of a levy to the Fund for Accidents Insurance;
• Simplified procedures for foreigners crossing the border;	• Uncertainty in the regulation of the telecoms sector through the lack of a well-formed draft Law "On telecommunications".
• Lifting the moratorium on the bankruptcy of agricultural enterprises.	

Source: International Centre for Policy Studies.

Expiration this year of the 5-year term of the "Transitional Provisions" of the Constitution of Ukraine became a significant impetus for the implementation of a small-scale legal reform. Over the period of June–July 2001, the Verkhovna Rada of Ukraine adopted a system of laws on reforming the national judicial system and court procedures. If these amendments had not been adopted by the parliament, Ukraine might have been left without a judicial system after 28 June 2001. The amendments increased opportunities for the protection of entrepreneurs' rights (see **Judicial reform**).

The crucial need to improve legislation on the protection of economic competition led the Verkhovna Rada to adopt the Law of Ukraine "On the protection of economic competition". After entering into effect in March 2002, this act will become the basis for Ukraine's antimonopoly legislation. Ac-

cording to the new law, the role of the Antimonopoly Committee of Ukraine will change dramatically; now the committee will perform proactive functions, i.e., for the effective assurance of economic competition. At the same time, the law includes provisions that might increase the risks for business activity (see **Protection of economic competition**).

Over the past 12 months, Ukraine has succeeded significantly in raising the level of economic openness for trade. Meanwhile, no noticeable changes have taken place in the sphere of capital flows and labour force movement (see **Open economy**). Over the past year, a number of legislative acts have been implemented with the purpose of strengthening intellectual property rights, diminishing the operating expenses of foreign trade entities, and eliminating obstacles for entry to Ukraine.

Effectiveness of corporate governance in Ukraine has diminished through the lack of adequate legislative underpinnings for the functioning of economic associations and ownership relations. For the second consecutive year, the legislative base for privatisation in Ukraine has been stable (this fact boosts investor confidence); however, due to poor compliance and allowance of exceptions to the general rules, the situation has deteriorated. The most glaring example of an exception to the general privatisation rules was the Law "On the particularities of privatisation of the Mariupol Illich Metallurgical Works", which contradicts the State Privatisation Programme.

Finally, we have evaluated modifications in the regulation of agriculture, tariff formation in the energy sector, and property relations (see **Sectoral regulation**).

In the process of regulating agriculture, state agencies have focused their efforts on supporting agricultural production. Increasing attention is being paid to measures aimed at eliminating the free market failures, to prevent excessive price fluctuations for agricultural commodities and stimulate producers' interest in this or that sector. But eliminating the government failures—weaknesses of the legal base, lack of coordinated state policy, and inadequate provision for the property rights of rural people—has been postponed.

New methods for the calculation of tariffs for the transmission and supply of electricity offer more freedom to those energy distributing companies which execute their obligations towards energy suppliers, and also distinctly stipulates terms of tariff setting. This approach is more effective and objective compared to the previous ones. However, this kind of regulation does not provide enough incentives to boost the efficiency of energy distributing companies (in particular, incentives to diminish excessive costs), and does not set firm control mechanisms; instead, it creates grounds for unproductive cost increases.

This report was prepared by:

Serhii Alekseichyk
Olexii Bakun
HlibVyshlinsky
Dmytro Koshovyi
Olha Pindiuk
Ruslan Piontkivsky
Serhii Seheda
Tetiana Sytnyk
International Centre for Policy Studies

Serhii Bereslavsky
Dmytro Liapin
Ksenia Liapina
Coordination and Analysis Centre for Ukrainian Business Associations

We appreciate the expert advice provided by: Yevhenia Akhtyrko, Andrii Vyshnevsky, Aleksander Kaliberda, Serhii Mykhailychenko, Serhii Movchan, Andrii Olenchyk, and Ivan Yakushyk.

The research was conducted with financial support from the Centre for International

Private Enterprise (CIPE) within the framework of the project "Evaluation of Changes in Economic Legislation".

The above experts and CIPE specialists are not responsible for the evaluations and conclusions expressed in this paper.

Good governance will ensure consistent economic policies

Consistency in government policy influences the business and investment environment in any country. Well-formed state policymaking rules and enforcement procedures offer more confidence to investors when planning their activity, due to the diminished risks associated with sudden changes of policy. The more unstable the governmental policy, the riskier investment activity becomes.

Ukraine lacks legislation which would consolidate procedures for the elaboration and approval of government decisions. In particular, formal procedures for consulting all interested parties in the process of making decisions are non-existent, and, therefore, business representatives are unable to directly influence government policy. Approval of non-coordinated decisions usually results in their frequent revision, under the pressure of different interest groups .

We believe that over the past year, the following decisions were positive improvements in the legislation regulating government management:

- *The adoption of the Budget Code of Ukraine on 21 June 2001. The Budget Code regulates the procedures for the preparation, reading, adoption, and execution of the state and local budgets. These regulations will contribute to the timely adoption of the law on the state budget and the decisions on local budgets. Moreover, the Budget Code decentralises the budget system in Ukraine, because it stipulates the independent and responsible role of local self-government budgets. However, the Budget Code does not envisage procedures of public control over budget execution, particularly through the procedure of open budget hearings;*
- *Implementation of the institution of state secretaries in the Cabinet of Ministers and different ministries, in accordance with the Presidential Decree dated 29 May 2001 "On the next measures to further conduct administrative reforms in Ukraine". The decree now distinguishes between the political functions personified by the Minister and the administrative functions performed by the State Secretary. Specifically, state secretaries will be in charge of analytical support for the preparation of government decisions. We believe that the major task state secretaries have to deal with is promoting the function of policy analysis in the government. In this case, the actual division between analytical (presentation and evaluation of all possible alternatives of state policy) and political (choosing one of the alternatives) functions in the government and consistency of governmental decisions will be achieved.*

One of the main principles of good governance is the justification of government interference in the economy. Grounds for such interference include market failures to allocate resources in the most effective way or overcome poverty. From this viewpoint, we consider it inexpedient to revive the Ministry of Industrial Policy (Presidential Decree "On the Ministry of Industrial Policy" dated 5 July 2001). We believe that the principal manifestations of the market failures in industry that require government interference are the monopoly of certain markets and negative environmental impacts. However, these issues lie within the competence of the Antimonopoly Committee and the Ministry of Environment and Natural Resources. In a market economy, regulation of economic activity must wholly shift from ministries to enterprises. Meanwhile, the restoration of the Ministry of Industrial Policy, on the contrary, assigns the functions of direct management of enterprises to the government. This may provoke excessive government interference, a fight for privileges for certain enterprises, and also the squandering of public funds.

Regulation of economic activity

Changes that have taken place during the last 12 months in the regulation of economic activity have followed these principles of licensing certain types of economic activity: (1) adherence to a single list of licensable types of economic activity; and (2) observance of the unified procedure for licensing these types of activity, stipulated in the Law "On licensing certain types of economic activity". The most important step in reforming the Ukrainian system of technical regulation and harmonising it with European standards was the adoption of the laws of Ukraine "On standardisation", "On confirming compliance", and "On the accreditation of compliance assessment agencies"

Entering and exiting the market

Since the adoption of the Law of Ukraine "On licensing certain types of economic activity" on 1 June 2000, the licensing sphere has undergone significant changes which resulted from the risks implied in this law. During 2000–2001 the following principles of licensing types of economic activity have been violated in Ukraine: first, adherence to a single list of types of licensable economic activity; and second, observance of the unified procedure for licensing these types of economic activity stipulated by the law. In particular, the following types of economic activity have been placed beyond the scope of influence of the law:

- activities in the production of ethyl, cognac, and fruit spirits, alcoholic beverages, and tobacco products; wholesaling of ethyl, cognac, and fruit spirits, and wholesale and retail sales of alcoholic beverages, and tobacco products (pursuant to the Law of Ukraine dated 11 January 2001 "On amending certain laws of Ukraine on the state regulation of the production and sale of ethyl, cognac, and fruit spirits, alcoholic beverages, and tobacco products");

- insurance activity (according to the Law of Ukraine dated 12 July 2001 "On financial services and state regulation of financial services markets").

Apart from this, the Law of Ukraine "On financial services and state regulation of financial services markets" introduced licensing for the following types of activity:

- activity in rendering services of the cumulative system of pension provision;

- granting financial credits from received funds;

- activity in rendering all sorts of financial services that imply direct or indirect involvement of financial assets of individuals.

From now on, licensing of the indicated types of economic activity should be conducted in accordance with special laws, not in accordance with the Law of Ukraine "On licensing certain types of economic activity". We consider these changes to be precarious because the norms of the corresponding special laws violate licensing principles of transparency. The licensing procedure does not provide sufficient guarantees to secure the rights and legal interests of license-holders. For example, according to the Law of Ukraine dated 19 December 1995

"On the state regulation of the production and sales of ethyl, cognac, and fruit spirits, alcoholic beverages, and tobacco products", licenses for the right to retail alcoholic beverages and tobacco products are of fiscal type, i.e., the trade outlet is licensable, not the type of activity.

In general, we consider it unreasonable to adopt special laws to regulate the mentioned types of economic activity, as these types of activity do not possess features that would require different licensing procedures from the ones stipulated by the Law "On licensing certain types of economic activity".

Another risk implied in the Law "On licensing certain types of economic activity", i.e., the possibility of granting a license of fiscal type, was revealed only after the Cabinet of Minister of Ukraine adopted the Resolution "On the term of validity of licenses to engage in certain types of economic activity, and on the amount and payment procedure for obtaining them" dated 29 November 2000.

According to the above resolution, the fee for granting a license to engage in the production and sales of ethyl, cognac, and fruit spirits, alcoholic beverages, and tobacco products, and also to render communications services and technical servicing of relevant networks, now considerably exceeds the corresponding fee for other types of economic activity. By adopting the above normative act, the government transformed the license into a tool for budget replenishment, which violates the principle according to which the fee for granting licenses is to remunerate only the management services of the licensing body.

During 2000–2001, the declarative principle of licensing which was mostly endorsed by the Law "On licensing certain types of economic activity" was also violated. According to the declarative principle of licensing, in order to obtain a license a business entity is to submit an application for a license and a copy of the certificate of state registration of the business entity or confirmation of the entry in the Unified State Registry of Enterprises and Organisations of Ukraine. On the other hand, according to the permission licensing principle, besides the documents certifying the intentions and identity of the business entity, during the licensing procedures the authorities also require other documents that testify to the ability of a given entity to conduct a specific type of business activity. According to the declarative licensing principle, the main responsibility is with the license-holder in conducting business activity, whereas the permission principle foresees such responsibility at the moment of entering the market.

Pursuant to the Law "On licensing certain types of economic activity", a list of supplementary documents can be determined only for certain types of economic activity. However, the Resolution of the Cabinet of Ministers of Ukriane dated 4 July 2001 "On approving the list of documents attached to the application for a license to conduct a certain type of economic activity" stipulates that supplementary documents should be submitted to obtain the license to conduct economic activity for the majority of types. This norm testifies to the refusal to put the declarative principle of licensing into effect.

Besides, in some cases, the resolution enforces sublicensing, i.e., before obtaining a license for a certain type of activity, it is necessary to obtain a license for another type of economic activity. Such norms are also inconsistent with the declarative principle of licensing.

The single list of types of licensable economic activities set forth by the Law "On licensing certain types of economic activity" has been extended since the adoption of the law with the following types of economic activity:

- issuing and conducting lotteries (according to the Law of Ukraine dated 21 September 2000 "On amending certain legislative acts of Ukraine aimed at im-

plementing state control over lottery activity");

- construction activity, including exploration and design work for construction, erecting load-carrying and perimeter constructions, and the building and assembly of engineering and transportation networks[2] (according to the Law of Ukraine dated 8 February 2001 "On amending the Law of Ukraine 'On the foundations of urban planning'");

- rendering educational services[3] (according to the Law of Ukraine dated 11 July 2001 "On pre-school education");

- rendering IP-telephony services (according to the Cabinet of Ministers of Ukraine Resolution dated 16 May 2001 "On amending the Cabinet of Ministers of Ukraine Resolution No. 1775 dated 29 November 2000").

Introducing licensing of some of the abovementioned types of economic activity is inconsistent with one of the major licensing principles, namely: an economic activity is subject to licensing if its initiation may lead to the violation of rights or legal interests of citizens, may jeopardise the life and health of citizens and the environment, and may pose a threat to national security. For example, pre-school educational establishments, in rendering educational services, do not issue any special state-standard certificate. Therefore, we believe that there is no need to set requirements for the quality of pre-school education and, respectively, no need for licensing.

Evaluation of the draft laws which are now at different stages of development gives us grounds to predict the following risks related to the enforcement of new laws of Ukraine that will deal with the licensing of different types of economic activity:

- licensing certain types of economic activity being governed by special procedures set forth by legislative acts other than the Law "On licensing certain types of economic activity", which stipulates a single licensing procedure;

- increased number of types of licensable economic activity, particularly with no regard for violation of the principle of objective justification for such licensing.

Regulation of product safety and quality

The most important step forward in reforming Ukraine's system of technical regulation and adjusting it to European standards was the adoption on 17 May 2001 of the laws of Ukraine "On standardisation", "On confirming compliance", and "On the accreditation of compliance assessment agencies". The above documents have the following features in common:

- ensuring the participation of business entities and their associations in measures regarding state policy enforcement in the sphere of technical regulation, in particular through the establishment of institutional mechanisms for entrepreneurs to influence the government (e.g., Standardisation Council and Accreditation Council);

- determining legal guarantees to secure the rights and legal interests of business entities and mechanisms for their protection (i.e., appeal procedures);

[2] Formerly, fewer types of construction activity were licensable, namely: manufacture and assembly of load-carrying constructions, and assembly of constructions in building and renovation activities

[3] Formerly, only establishments of general education, vocational establishments, and higher education establishments had to obtain licenses for rendering educational services. Now, rendering education services is licensable whatever the case, regardless of the type of establishment.

- opportunity for business entities to adopt an alternative line of conduct in some cases, to ensure adherence to legislation.

Standardisation

The key innovations in the Law of Ukraine "On standardisation", in our opinion, are the following:

- The principle of voluntary and free choice in the application of standards for the production and supply of products has been implemented. However, in some cases the enforcement of standards and certain provisions is obligatory;

- The following requirements regarding the content of standards have been set forth: consistency with legislation, meeting market and consumer needs, adjusting to the level of development in science and technology, conformity to international and regional standards. In addition, it is prohibited to abuse standards in order to defraud consumers or infringe the terms of competition;

- Review of existing national standards is to be conducted not less than once in five years;

- Accessibility of standards and information on them to users;

- In Ukraine, the principle has been adopted of priority direct introduction of international and regional standards as national standards, through their adoption in the central executive authority in the standardisation sphere (i.e., the Committee of Ukraine on Standardisation, Metrology and Certification, or Derzhstandart). The method of introduction entails, first, the publication of national standards based on the corresponding international (regional) standard; and, second, confirmation that the international standard has the same status as a national standard;

- Economic entities and their associations, unions (associations) of consumers, and corresponding public organisations have been involved in the development of standards; a Standardisation Council has been formed as a unit of the Cabinet of Ministers of Ukraine, whose members can be representatives of economic entities and their public organisations.

At the same time, we believe that the Law of Ukraine "On standardisation" also carries certain risks. Even approximate terms for the harmonisation of national standards have not been set therein. The law stipulates that the Cabinet of Ministers of Ukraine should only establish the procedure and terms of validity for sectoral standards and other corresponding normative acts of the former USSR. This may result in the long-term operation in Ukraine of standards ill-suited to the requirements of the market and the existing level of scientific and technological development.

Confirming compliance

We consider the following innovations introduced in the Law of Ukraine "On confirming compliance" to be positive and significant:

- Procedures for declaring compliance have been established: the producer or its authorised representative certifies in written form under full responsibility that a product meets the compliance requirements established by legislation;

- The possibility of choosing between declaring compliance and certification for confirming compliance;

- Granting the right to certification agencies of any form of ownership to engage in activity of confirming compliance (formerly, only certification agencies under state ownership had the right to engage in this kind of activity);

- Transfer of the right to enforce obligatory certification of compliance for various

kinds of products, and the enforcement procedure, to the Cabinet of Ministers of Ukraine (formerly, only Derzhstandart had the right). Economic entities have the opportunity to protect their interests with the help of available mechanisms of public influence on the process of adopting government decisions.

On the other hand, we believe that the Law of Ukraine "On confirming compliance" implies the following risks:

- Criteria have not been identified for allocating certain types of products to the legally regulated sphere in which confirming compliance is regarded as obligatory. Hence, now the types of products which pose a potential threat to the life and health of people, animals, plants, and also property and the environment can also be attributed to this sphere. In this case, there is a danger of ungrounded expansion of the list of products subject to obligatory confirmation of compliance;

- Certification agencies which confirm compliance must be not only accredited but also authorised to conduct this kind of activity. However, the Law "On confirming compliance" sets neither the procedures nor the principles for obtaining this authority. Therefore, the risk exists that the requirements of authorised certification agencies and the procedures for granting them authority (which are to be defined by the Cabinet of Ministers of Ukraine) can contain groundless hurdles to obtaining the authority to engage in the activity of confirming compliance.

Accreditation of agencies conducting compliance assessments

It is worthwhile mentioning the following innovations introduced in the Law of Ukraine "On the accreditation of agencies conducting compliance assessments":

- Derzhstandart is no longer responsible for the accreditation system;

- mandatory accreditation of agencies conducting compliance assessments, and their further monitoring, by the national accreditation agency, which is a state non-profit organisation;

- ensuring the non-interference of the executive authorities (among them the Ministry of Economy of Ukraine, which forms the national accreditation agency) in the activities of the national accreditation agency;

- establishment of an Accreditation Council, as a unit of the national accreditation agency, to perform consulting and supervisory functions. In parity with other members, representatives of accredited agencies on compliance assessments, enterprises, institutions and organisations, the National Academy of Sciences of Ukraine, and other scientific institutions and public organisations will join the council;

- along with the judicial mechanism, the implementation of a different mechanism to appeal the rejection of an accreditation application issued by the compliance assessment agency. It will provide the opportunity to apply to the appeal commission, and will also ensure the impartiality of the management of the national accreditation agency;

- eliminating the possibilities of full control by the national accreditation agency over the process of accreditation.

Nevertheless, the new law implies a serious risk. Developing accreditation procedures for agencies conducting compliance assessments lies within the purview of the national accreditation agency, which actually performs the accreditation. Hence, there is a danger of the accreditation rules being adjusted to the interests of the national accreditation agency.

State support of small business

The Law of Ukraine "On the state support of small business" dated 19 October 2000 designated small businesses as objects of state support. One of the tools of state policy in this area will be small business support programs, in particular, the National Program for Small Business Development, the Small Business Support Program in the Autonomous Republic of Crimea, and regional and local small business support programs.

On 21 December 2000, the Verkhovna Rada adopted the Law of Ukraine "On the National Program for Small Business Development in Ukraine". Not only central or local government authorities but also business associations and business infrastructure entities (business centres, business incubators, leasing, finance and credit, and consulting agencies, etc.) can participate in the implementation and monitoring of the national program. The national program specifies 5 key objectives of stimulating the development of small business in Ukraine:

- *improvement of the legislative base regulating business activity;*
- *development of a single state regulatory policy;*
- *stimulation of finance and credit and investment support for small businesses;*
- *establishment of infrastructure to stimulate small business development;*
- *implementation of regional policy to stimulate small business development.*

The Cabinet of Ministers is to annually approve measures for the implementation of the national programme and submit them for consideration to the Verkhovna Rada. The measures should specify the content and expected outcomes of the implementation of specific measures, individuals in charge of the project implementation, project schedule and project cost, and the scope of budget financing.

We believe that the strength of the National Program for Small Business Development is that all instruments for policy implementation that are to be enforced by different government agencies are incorporated into a single coordinated document; this provides a realistic opportunity to consolidate efforts and resources.

Yet the majority of measures for the implementation of the national program are not formulated clearly enough. Moreover, the document provides no indicators that may help to assess the effectiveness of the program measures.

In addition, the majority of measures for the national program implementation for the year 2001 must be essentially enforced by the executive authorities within the scope of their functional duties, and financed from the budget allocated for these agencies, not from the funds allocated for the implementation of the national program itself.

We believe that whether the national program succeeds in stimulating small business development in Ukraine for the year 2002 and further depends on resolving the following issues:

- *determining criteria by which the measures for the enforcement of the national program will be stipulated;*
- *change from identifying the individuals in charge of the enforcement of measures to the "client-executor" system, which will stimulate effective implementation of the program measures;*
- *complete transition to determining measures in the form of projects, with clearly defined goals and terms of implementation;*
- *establishment of a transparent and fair mechanism of selecting executors of the national program;*
- *specification of financing sources of the national program (including budget funds) and determining the costs of each measure;*
- *determining measurable and observable indicators of effective program implementation.*

The effect from adopting the laws of Ukraine "On standardisation", "On the accreditation of compliance assessment agencies", and "On confirming compliance" has not been revealed fully, for two reasons: first, the national accreditation agency, which is to take the accreditation system away from the management of Derzhstandart, has not been established yet; second, it is quite obvious that the by-laws and technical regulations pertaining to the scope of this law will not be adopted in the nearest future.

It is also worth mentioning that there are risks implied in all three of the mentioned laws. First of all, the concepts and principles established in the technical regulation-systems of European countries have not yet begun to be widely introduced in Ukraine. Under these conditions, there is a danger of free interpretation of these notions by the parties involved. Secondly, there exists a risk of spawning multiple by-laws regulating the vital issues stipulated in these laws. As the lawmaking practices in Ukraine prove, such an approach can adversely affect the process of implementating any reform-minded provisions stipulated in the principle law.

Currently, a law is being drafted on production safety and responsibility for unsafe products. This law is to replace the Decree of the Cabinet of Ministers of Ukraine dated 8 April 1993 "On state control over the enforcement of standards, norms, and rules, and responsibility for their violation", where the defined system of state monitoring is outdated and is inconsistent with the realities of market relationships and legislative innovations in the sphere of technical regulation.

Holographic protection of documents and products

The Decree of the President of Ukraine dated 15 November 2000 "On protecting documents and products with holographic protective elements" envisages to launch in Ukraine the large-scale protection of goods and documents with holographic protective elements, in order to achieve the following aims: strengthened national security, prevention of distribution of counterfeit products and document falsification, contributing to the protection of the Ukrainian market from poor-quality products. The Security Service of Ukraine is the agency authorised to enforce state policy in the sphere of holographic protection of documents and products (it has been authorised to execute the corresponding additional duties).

Holographic protective elements were to be introduced starting from 1 January 2001. However, this has not been enforced yet, as the Cabinet of Ministers of Ukraine has not approved the list of documents and products to be protected with holograms.

Carrying out the norms of the Decree of the President of Ukraine "On protecting documents and products with holographic protective elements" will dramatically affect the activities of economic entities. In order to enforce this decree, the Cabinet of Ministers of Ukraine approved the Resolution "On approving the Regulations on the procedure for holographic protection of documents and products" on 24 February 2001. The resolution introduces stringent regulation procedures for the production and application of holographic protective elements, pursuant to which economic entities cannot assess the expediency of holographically protecting their products and documents, so they actually become [forced] end users of documents with holographic protective elements.

We believe that economic entities will be forced to spend huge resources to purchase holographic protective elements and mark their products with them. They will also face difficulties in adjusting the technological process of manufacturing products with holograms. In addition, while implementing holographic protection of documents, economic entities, consumers, and the state budget will incur losses, as was the case with the expansion of the list of documents of strict accountability and reporting. At the same time, the realistic possibility of the sys-

tem of holographic protection of products and documents to ensure the aims declared by the legislative acts does not fundamentally differ from the opportunity offered by the system of enforcement of forms for strict accountability and reporting—which was severely critised by associations of entrepreneurs of Ukraine at the time.

The extent of the impact of enforcing holographic protection of documents and products will depend on what documents exactly will be included on the list of documents and products that are to be protected with holographic protective elements (this document is to be approved by the Cabinet of Ministers of Ukraine). Having evaluated the draft list, we came to the conclusion that the majority of documents, and all of the products, are hardly worth including on the list.

Tax policy

Since during the last year the work on the Tax Code has not been finalised, Ukrainian tax legislation did not undergo any significant changes. The most notable event was the adoption of the Law "On the procedure for redeeming taxpayers' liabilities towards budgets and state targeted funds". This law will encourage more effective and transparent tax enforcement. At the same time, urgent tasks still remain of reducing the tax burden and equalising it among taxpayers

Tax Code

Over the past year, the Verkhovna Rada has not progressed any further in consideration of the Tax Code. Discrepancies, which were identified in the Verkhovna Rada resolution dated 13 July 2000 regarding adoption of the Tax Code in first reading, are in the process of being resolved. In particular, the corporate profit tax rate, the maximum rate of personal income tax, the value-added tax rate, and the taxation base for the real estate tax need to be agreed upon.

We believe that the main reason for the delays in adopting the Tax Code is the feeble government decision-making process in Ukraine. In international practice, the development and coordination of state policy strategy precedes the elaboration of draft laws, with the strategy described and distributed in the form of green or white papers.[4] After the goals and options of state policy have been agreed upon by the interested parties, the government prepares a draft law which serves as a tool for implementation of the agreed policy.

In Ukraine, the procedure of adopting government decisions is usually associated with a draft law, which lays down a single policy variant. In the process, however, new proposals inevitably come up, and since the policy strategy has not been agreed upon, it becomes difficult to coordinate the different proposals, to say nothing about their legal formalisation.

With regard to the draft Tax Code, the main dilemma in the process of adopting it is, on the one hand, an attempt to alleviate the tax burden, and, on the other hand, trying to prevent a significant slump in budget revenues. One of the compromise variants is set forth in the President's Edict "On the main objectives of the 2002 budget policy" dated 31 May 2001. The statement includes the following proposals:

- reduce the VAT rate from 20% to 17%;[5]
- reduce the corporate profit tax rate from 30% to 25%;[6]

[4] In a Green Paper, the government submits for consideration a public issue or draws attention to a probable course of events. In a White Paper, the government summarises the debates about a Green Paper and formulates possible solutions or ways of their usage.

[5] In a resolution dated 13 July 2000, the Verkhovna Rada proposed to set the VAT rate at 15%.

[6] Pursuant to the resolution dated 13 July 2000, the Verkhovna Rada proposes to leave the rate of the corporate enterprise tax at the 30% level, and to increase norms of depreciation costs. The Ministry of Finance believes that this change will lead to an increased number of unprofitable enterprises, and as a result the budget revenues will nosedive, unlike the case if the rate of the corporate tax is reduced and the current rates of depreciation costs are left the same.

- introduce a new scale for personal income tax, and set its maximum rate at 25%;
- reduce the dividend tax rate from 30% to 15%;
- abolish tax privileges based on the sectoral principle, or as part of economic experiments.

The lack of a coordinated strategy has led to discrepancies regarding the norms of the draft Tax Code which envisage structural changes in the taxation system. Particularly, it involves the following norms:

- introduction of a real estate tax, which is to encourage a more efficient allocation of resources. However, in Ukraine the underdevelopment of the real estate market, including the land market (see **Agriculture**) and housing market, as well as the low mobility of citizens, are hampering the implementation of this tax. Therefore, it is advisable to consider options for a gradual implementation of this tax;
- introduction of a unified social tax instead of the collection of levies to four funds of obligatory state insurance. This change should help to reduce businesses' compliance costs;
- implementation of a differentiated VAT rate. We judge that a lower VAT rate (e.g., 8%) for sales of agricultural produce would be an alternative if the exemption of agricultural produce sales from VAT is abolished (see **Agriculture**).

In his edict, the president charged the government with analysing these issues and working out relevant proposals. In order to execute these tasks, the government has to follow the tactic of determining and coordinating the goals of tax policy, analysing all options and their consequences, discussing them with interested parties, and choosing an acceptable version which will be finalised in the form of a law.

Tax administration

The most important legislative acts in the taxation field, adopted during the last year, have pertained to tax administration. We believe that effective tax administration must foresee the least possible costs for both taxpayers and the tax authorities.

Redeeming tax liabilities

The most significant event in tax administration was the adoption of the Law of Ukraine dated 21 December 2000 "On the procedure for redeeming taxpayers' liabilities towards budgets and state targeted funds". We believe that this law will promote more effective tax administration, thanks to the detailed regulation of procedures governing the interaction between taxpayers and tax authorities. The law introduced the following innovations:

- The *kartoteka* (the prerogative right of the state to unilaterally seize funds from the accounts of enterprises to settle tax debts) has been abolished (see **Financial legislation**);
- Procedures for submitting and reviewing tax declarations have been put in order;
- A comprehensive list has been drawn up of agencies controlling the collection of taxes, duties, and compulsory payments; it includes tax administration bodies, customs offices, and agencies of the Pension Fund and Social Insurance Fund. Only the tax bodies and state executives are entitled to collect taxes, in accordance with their authority. By this law, the supervisory agencies are entitled to conduct checks of timeliness, authenticity,

and accurateness of accrual of only those taxes and duties which pertain to the scope of their authority;

- Procedures for regulating tax payments have been set. Taxpayers independently calculate their tax liabilities in their tax declaration. If taxpayers do not submit a declaration, or if a tax body questions the authenticity of information stated in the declaration, then the tax agency independently determines the amounts of tax liability. Taxpayers are entitled to appeal decisions of control bodies administratively or in court (see chart). Procedures for the administrative appeal give taxpayers some time in order to resolve their situation of not being able to pay taxes. Moreover, penalties are not accrued during this period;

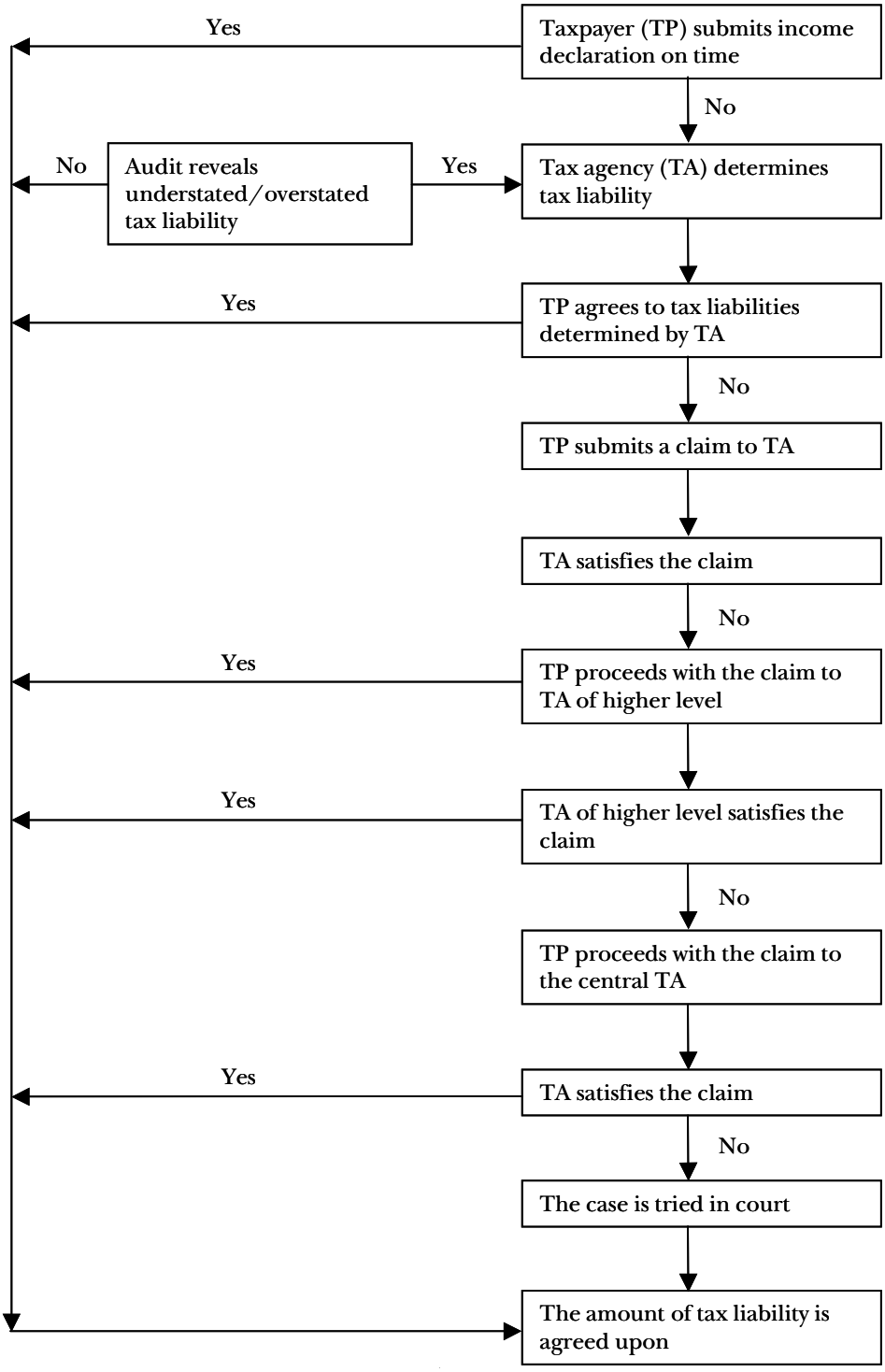
- In the process of an administrative appeal, if the norms of the tax legislation are interpreted ambiguously, the variant foreseeing a decision in favour of the taxpayer should be preferred. However, this rule is not binding for the court. Clarifications made by tax bodies from now on will not be regarded as normative-legal acts, and they can only be issued by the central tax body. Taxpayers cannot be called to account if in their actions they were governed by tax directives which were later modified;

- The practices of partial payment of tax debts, postponement of payments, and payments by installment have been legalised. The basis for this tax compromise[7] is the evidence collected at the tax body proving that this tax compromise will speed up the settlement of tax liabilities, or will stimulate the full repayment of tax debts, while if a case is being passed to the courts, these results would not be achieved. An official from the tax body who is in charge of reviewing the taxpayer's claim must submit a written justification of the advisability of the tax compromise, and must agree the decision with two other tax officials. Grounds for tax payment by installment (or a delay in payment) can be a justified statement from the taxpayer indicating temporary inability to pay taxes. Decisions on paying general state taxes by installment within a budget year is confirmed by the chief of the tax body and approved by a high-level manager of the tax body. If the delay in payment goes beyond the budget year, the decision must be taken by the chief of the central tax body, having agreed it with the Ministry of Finance. In case of the restructuring of [procedures for] paying local taxes and duties, the decision is endorsed by the manager of the tax body and adopted by the financial body of the local executive authority. Losses from payment by installment should be indicated in the budget execution reports, and decisions on payment by installments should be published annually. We believe that the establishment of legal procedures for tax payment by installment will enhance the transparency of the tax bodyactivity, and will limit abuse;

- Procedures for tax debt seizure by means of tax collateral have been determined (corresponding articles come into effect on 1 October 2001). If the tax declaration is not submitted at all or taxes are not paid on time, all property of the enterprise becomes tax collateral. According to the norms stipulated in the law, the enterprise has at least two months to resolve the problem with its tax debts (to pay the tax debt or agree on payment by installments or find a tax compromise). After two months have elapsed, the tax agency can sell the assets in tax collateral in order to redeem the debt. Taxpayers have the right to set the priority order of selling their assets. The law demands that all assets should be sold through public auctions.

[7] Tax compromise is the satisfaction of some part of the claim of a taxpayer by the tax agency, under the condition that the taxpayer undertakes to pay the rest of the liabilities calculated by the tax agency.

Chart I. Procedures regulating tax payments



We believe that the highest risk in enforcing this law will be the impact of the norm regarding the application of indirect methods for determining tax liability. If methods of indirect assessment are not developed and broadly enforced, and if an independent expertise of these methods is not conducted, then granting tax agencies the right to apply indirect methods may bring about rent-seeking on the part of representatives of these agencies. Success of the implementation of this law will depend on the progress achieved in the process of establishing an independent judicial system (see **JUDICIAL REFORM**).

Other changes

On 1 September 2001 the new Criminal Code of Ukraine, adopted by the Verkhovna Rada on 5 April 2001, came into effect. According to the revised version of the code, the degree of criminal responsibility for intentional tax evasion has been reduced (see Table 2).

The Law of Ukraine dated 22 March 2001 "On amending the Cabinet of Ministers of Ukraine Decree 'On excise'" eliminated the ambiguity in the norms on excise collection. In particular, the definition of the concept 'excise' has been specified, tolling sales schemes were added as objects of taxation, and it was resolved to collect the excise by accrual.

The revised version of the Law of Ukraine "On implementation of a single duty collected at check-points of the national border of Ukraine" will encourage more effective implementation. In particular, the law, dated 12 July 2001, clearly stipulates the rates of the single duty (see **OPEN ECONOMY**).

Changes in the tax burden

Over the past year, an increased tax burden has been imposed on enterprises, because of the increased duties collected to the state insurance funds.[8] Meanwhile, the positive trend to abolish sectoral taxes and duties has continued.

State insurance duties

Pursuant to the legislative amendments, three general funds of mandatory social insurance were established in Ukraine: the Fund for Insurance Against Temporary Professional Disability (the legal successor of the Social Insurance Fund), the Fund Promoting Employment, and the Fund for Social Insurance Against Accidents. All three funds possess the status of non-commercial self-governing organisations, and they are managed by representatives of the government, employees, and employers on a parity basis. This strengthens public control over the usage of insurance funds.

However, the establishment of three separate social insurance funds will increase the business costs of enterprises. According to the law, the enterprise (entrepreneur) should be registered in each fund, and also report to each fund separately. Still, there are no standardised requirements for reporting. The biggest report by content is the one to be submitted to the Fund for Social Insurance Against Accidents. An entrepreneur must annually submit information on the number of employees, annual payroll, actual volume of sales, the number of accidents, and occupational diseases.

According to our estimations, in the wake of changes in the legislation on state social insurance, the average tax burden on the wage pool in the economy increased approximately from 37.5% to 39%.

On 1 April 2001, the Law dated 23 September 1999 "On obligatory general state so-

[8] The Law dated 25 June 1991 "On the taxation system" regards the duties collected for state insurance as part of the taxation system.

cial insurance against accidents at workplaces and occupational diseases which resulted in professional disability" came into effect, in accordance with which employers pay duties to the Fund for Social Insurance Against Accidents. The insurance tariff fluctuates between 0.84% and 13.8% of the wage pool, depending on the class of professional risk of production. The professional risk class, and thus the tariff rate, are determined by the Fund for each enterprise individually, in accordance with the law dated 22 February 2001 and the Cabinet of Ministers resolution dated 13 September 2000. On average, the duty in the economy will amount to about 2% of the wage pool. The highest tariff, 13.8%, is set for underground coal mining.

Table 2. Criminal responsibility for intentional tax evasion[9]

Types of intentional tax evasion	– pursuant to 1960 Criminal Code		– pursuant to 2001 Criminal Code	
	Definition	Punishment	Definition	Punishment
In significant amounts	Over 1,700 UAH	Up to 2 years of correctional work, or prohibition to occupy certain official posts or engage in certain activities for 3 years, or 5,100 UAH of fine.	Over 17,000 UAH	Fine from 5,100 to 8,500 UAH, or prohibition to occupy certain official posts or engage in certain activities for 3 years.
In large amounts	Over 4,250 UAH	Imprisonment for up to 5 years with prohibition of occupying certain official posts or engaging in certain activities for 3 with (or without) property seizure, or up to 2 years of correctional work, or 17,000 UAH of fine.	Over 51,000 UAH	Fine from 8,500 to 34, 000 UAH, or correctional work for 2 years, or probation for 5 years, with prohibition of occupying certain official posts or engaging in certain activities for 3 years.
In exceptionally large amounts	Over 17,000 UAH	Imprisonment for 5 to 10 years with property seizure, and prohibition to occupy certain official posts or engage in certain activities for 5 years.	Over 85,000 UAH	Imprisonment for 5 to 10 years with prohibition of occupying certain official posts or engaging in certain activities for 3 years, with property seizure .

Source: Criminal Code of the USSR dated 28 December 1960, Criminal Code of Ukraine dated 5 April 2001.

According to the Cabinet of Ministers resolution issued on 7 March 2001, the maximum wage of an employee, from which the duties to the fund of social insurance are deducted was increased from 1,000 to 1,600 UAH. This resolution proves the instability of the tax policy and is inconsistent with the Law of Ukraine "On the taxation system",

[9] In the Criminal Code, the threshold of responsibility and amounts of fines are set in "non-taxable minimums". We present these indicators in hryvnias, given that the "non-taxable minimum of income of citizens" is currently 17 UAH.

which stipulates that changes in the mechanism of collecting taxes and duties must be enacted exclusively by law.

Moreover, pursuant to the Law of Ukraine dated 7 December 2000 "On the State Budget for 2001", the term of validity for additional duties to the Pension Fund was extended.

On the other hand, according to the Law of Ukraine dated 11 January 2001 "On the amount of contributions to certain types of mandatory social insurance", contributions for social insurance of temporary professional disability and unemployment were reduced overall from 5.5.% to 5% of the wage pool. However, this reduction is too insignificant to compensate the losses after introduction of the duties collected to the Fund for Social Insurance Against Accidents.

Taxes

Taxes should not raise barriers to entering the business market or to promoting economic competition. Taking this fact into consideration, tax reform in Ukraine needs to abolish sectoral taxes and create favourable conditions for the taxation of small businesses.

The law dated 7 June 2001 abolished the excursion and tourism duty.[10] This decision will promote competition in the tourism sector. Nevertheless, a decision to abolish the duty for the development of grape-growing, horticulture, and hops-growing has not been approved yet.

Pursuant to the Law of Ukraine dated 14 September 2000 "On amending the Law of Ukraine 'On the value-added tax'", the threshold of volume of operations, overstepping of which requires the registration of an enterprise as a VAT taxpayer, was increased from 600 to 3,600 "non-taxable minimums" (from 10,200 to 61,200 UAH). Thanks to this change, the compliance costs for small and medium businesses will significantly decrease.

Equality of taxpayers

Over the past year, the government has not wholly enforced its declared policy of abolishing tax privileges granted according to the sectoral principle or within the framework of economic experiments. Decisions taken in this area had been incosistent:

- The term of validity of the VAT exemption of transactions of sale of agricultural output was extended (pursuant to the Law of Ukraine "On promoting agricultural development for 2001–2004"; see **Agriculture**), yet the seasonal privileges for importing diesel oil for agriculture were abolished (pursuant to the law dated 7 July 2001);

- The term for conducting the experiment in the mining and metallurgic complexwas extended to 1 January 2002, but the discount rate of the profit tax for enterprises participating in the experiment increased from 10% to 15% (pursuant to the law dated 7 December 2000);

- Laws on establishing three special economic zones were adopted, although after the results of their activity became evident, the list of privileges for the Slavutych SEZ was shortened (pursuant to the Law of Ukraine dated 5 October 2000 "On amending Article 9 of the Law of Ukraine 'On the Slavutych Special Economic Zone'").

The issue of debt write-offs stipulated in the law dated 21 December 2000 stirred up the most disputes. On the one hand, such write-

[10] The excursion and tourism duty was introduced by the Law dated 8 July 2000 "On the protection of cultural heritage". Payers of this duty were enterprises of the tourism sector.

offs helped to resolve the stagnant tax debts. On the other hand, write-offs violate the principle of equality of taxpayers, since they favour those enterprises which have paid no taxes.

Nevertheless, we expect that the practice of unjustified tax write-offs will be abandoned in the future. The law dated 21 December 2000 declares that only bad tax debts are subject to being written off. Bad debts are, for example, the debts of a bankrupt enterprise, a deceased individual, and also a debt which has not been seized within 1,095 calendar days starting from the day of determining the tax liability.

Judicial reform

Expiration of the five-year term of the "Transitional Provisions" of the Constitution of Ukraine became a significant impetus for the implementation of a small-scale legal reform. Over the period of June–July 2001, the Verkhovna Rada of Ukraine adopted a set of laws on reforming the national judicial system and court procedures. Amendments to the following laws of Ukraine were adopted: "On the judiciary in Ukraine", "On the status of judges", "On bodies of judicial self-government", "On the public prosecutor's office", "On the arbitration court", "On the militia", and also on making amendments to the procedural codes. If these amendments had not been adopted by the parliament, Ukraine might have been left without a judicial system after 28 June 2001

The goals of judicial reform in Ukraine are the following: (1) organisation of the judicial authority to be independent of the legislative and executive authorities; (2) reorganisation of the judicial system on the basis of territory and specialisation; and (3) improvement of court procedures so that they will ensure the right of any citizen to have his/her case considered by a competent, independent, and impartial court.

Thanks to modifications in the Law of Ukraine "On the judiciary in Ukraine", the Criminal Code, Civil Code, and Arbitration Code of Ukraine introduced on 21 June 2001, the system of courts of general jurisdiction from now on corresponds to Article 125 of the Constitution of Ukraine. The highest judicial body is the Supreme Court of Ukraine. Raion (municipal) courts, military courts of garrisons, commercial courts of the Autonomous Republic of Crimea, oblast courts, and municipal courts of Kyiv and Sevastopol acquire local status. The Supreme Court of the Autonomous Republic of Crimea, oblast courts, Kyiv and Sevastopol municipal courts, military district courts, and naval courts acquire the status of appeal courts. The law envisages the creation of commercial appeal courts, and the Supreme Arbitration Court acquires the status of the Supreme Commercial Court of Ukraine.

The changes in court structure offer more possibilities to protect entrepreneurs' rights. Now, appeal courts can review cases and adopt new decisions. These establishments now have the right to directly investigate evidence and evaluate it independently from the opinion of the first instance court. This means that if one of the parties to the investigated case is not satisfied with the verdict of the first instance court, this party stands a realistic chance of soliciting a comprehensive reconsideration of the actual circumstances of the case in the appeal court, and can also demand adherence to material and procedural legislation. Moreover, there is a chance for reconsideration of a disadvantageous verdict on appeal, despite the fact that the court's decision may come into effect by this time. This kind of judicial system is established in developed countries.

The objective of legal reform in Ukraine is to establish judicial control over the legality and validity of procedural decisions of investigating bodies which restrict citizens' rights. Such control is stipulated in the Law of Ukraine dated 21 June 2001 "On amending the Criminal Code of Ukraine", which authorises courts to adopt decisions that result in restrictions during the period of pretrial investigation of cases dealing with the most essential constitutional rights and freedoms of citizens. Notably, only the court

can decide on arrests, custody, and detention of individuals suspected of having committed a crime, and also on conducting searches of premises or other property of suspects. From now on, the prosecutor's functions are limited and he/she even has no right to issue arrest warrants. Without a court warrant it is impossible to seize a suspect's correspondence, to tap communications lines, or to install listening devices.

The Law of Ukraine dated 21 June 2001 "On amending the Law of Ukraine 'On expert committees, qualificatory attestation, and disciplinary responsibility of judges of courts of Ukraine'" increases the disciplinary responsibility of judges. Now, we believe that willfulness in adopting decisions which restrict the constitutional rights of citizens will be reduced.

In order to observe constitutional rules of lawmaking, such as competitiveness and support of the state prosecutor in the courts, significant changes were introduced to the Procedural Code of Ukraine regarding the scope of rights and obligations of the parties to the trial:

- From now on, during a court trial, a single body or individual cannot be solely responsible for executing the functions of prosecution, defence, and adopting decisions. During a criminal trial, the court is prohibited from executing duties of the prosecution or defence. The prosecutor acts on behalf of the state, or in some cases the victim or his/her representative. The defendant himself/herself can act as a defence lawyer, as can his/her lawyer or an authorised representative. The court is only authorised to consider cases and issue decisions;

- The possibilities of the defence in the courts are considerably increased. The defence lawyer's rights stipulated in the Criminal Code of Ukraine permit this individual to actually conduct a parallel independent investigation, and to find evidence and witnesses. In this case, if sufficient financial resources and enough time are available, there is a chance to equalise defence party and prosecution party positions.

In general, the small-scale legal reform has laid the foundation for the implementation of general legal reforms in Ukraine and the proper assurance of the rights and freedoms of citizens. The introduced changes give reason to believe that the third arm of government has become more independent. At the same time, we believe that some problems have not still been solved; these are:

- No pre-trial investigation has been organised;

- No jury institution has been created through which citizens can directly participate in court proceedings;

- Parliamentarians did not reach an agreement regarding the revised version of the Law of Ukraine "On the judiciary in Ukraine", which will be a sort of constitution for the judicial arm of government;

- No financial resources have been identified for the judicial reform process, which requires significant funding.

Protection of economic competition

The crucial need to improve legislation on the protection of economic competition resulted in the Law of Ukraine "On the protection of economic competition" being adopted on 11 January 2001. After entering into effect as of March 2002, this act will become the basis for Ukraine's antimonopoly legislation and will replace the Law of Ukraine dated 18 February 1992 "On restricting monopoly and preventing unfair competition in entrepreneurial activity". According to the new law, the role of the Antimonopoly Committee of Ukraine will change dramatically; now the committee will perform proactive functions, i.e., effective assurance of economic competition. At the same time, the law includes provisions that might increase the risks for business activity

The Law of Ukraine dated 11 January 2001 "On the protection of economic activity" provides an accurate and comprehensive definition and classification of anti-competitive coordinated actions of business entities and abuse of monopolistic (dominant) positions in the market.

The new law includes a list of features of monopolistic (dominant) positions for a number of business entities, while the Law "On restricting monopoly and preventing unfair competition in entrepreneurial activity" did not provide this list.

A separate section of the law is dedicated to identifying anti-competitive actions of central government bodies, local government bodies, and bodies of administrative-economic management and control. As these anti-competitive actions are characterised comprehensively enough, we believe that these norms will give the Antimonopoly Committee of Ukraine additional legal support to prevent violation of the principles of economic competition by central and local government bodies.

The law regulates in detail the activities of the Antimonopoly Committee. Nearly half of the law's provisions set procedures for granting permission for coordinated actions or concentration of business entities, as well as procedures for reviewing cases of violated legislation on the protection of economic activity and for executing decisions and orders of the Antimonopoly Committee of Ukraine. The aim of such detailed regulation is to establish clear and transparent procedural rules for the activities of the Antimonopoly Committee of Ukraine.

The role of the Antimonopoly Committee has been changed dramatically. This legal entity will now perform not only reactive functions directed to limit monopolistic manifestations and preventing unfair competition, but also proactive functions assigned to the committee, to effectively protect economic competition.

On the other hand, the Law "On the protection of economic competition" includes norms that may increase the risks for business activity:

- The definition of the term "goods market" is not comprehensive. The law states that there exists a circulation of (exchangeable) goods for which there is a certain demand and supply over a certain period and within a certain territo-

ry. As the Law "On the protection of economic competition" does not define the minimum territorial unit that possesses the status of a "certain territory", this term can be interpreted in a broad sense (territory of Ukraine, oblast, raion, or inhabited locality) and in a narrow sense (even a suburb or street in an inhabited locality). Therefore, due to the hazy definition of the "goods market", officials from the Antimonopoly Committee of Ukraine may interpret the term "a certain territory" quite freely. We believe that as a consequence, the actions of business entities may be unreasonably qualified as violation of legislation on the protection of economic competition and, hence, this results in a greater number of these entities being called to account;

- According to the Law "On the protection of economic competition", the penalties and fines seized must be allocated to a special fund of the State Budget of Ukraine as the own proceeds of the Antimonopoly Committee of Ukraine, and be used for the committee's needs, unless otherwise stated in legislation. This norm is inconsistent with the state policy regarding sources of financing for state government bodies, and it also creates incentives for the Antimonopoly Committee to increase proceeds from imposed penalties. We believe that under these conditions, officials from the Antimonopoly Committee of Ukraine will not remain impartial when considering cases of violation of antimonopoly legislation;

- Potential violators of legislation on the protection of economic competition are being treated unjustly in terms of the degree of responsibility. A penalty of 1–10% of the previous year's income is imposed onto business entities, while for officials of central and local government bodies the law envisages only administrative accountability.

Open economy

Increased openness of the economy means lower barriers for the foreign trade of goods and services, international capital flow, and labour force movement. Thanks to an open economy, different countries have more opportunities to maximise trade revenues, and optimise the allocation of global resources via the effective promotion of competitive advantages . Over the last few years, a tendency towards increased economic openness has been observed in developed countries, developing countries, and countries with a transitional economy. Over the last 12 months, Ukraine has progressed noticeably in increasing the degree of trading openness of its economy; meanwhile, in the sphere of capital flows and labor force movement, no visible changes have occurred so far

Trade openness

The institutional basis and coordination of liberalised trade relations are maintained by the World Trade Organisation (WTO). Ukraine's accession to the WTO has dragged on for eight years already, through the lack of a coordinated foreign trade policy.[11] In order to be accepted to the WTO, Ukraine needs to harmonise its legislation with the GATT/WTO requirements, in particular:

- ensure the protection of intellectual property rights (IPR);
- abandon discriminatory protectionism in agriculture (including import and export quotas and regulation of prices for mineral fertiliser; see **Agriculture** [12]) and the mining and metallurgical complex (tax benefits, quotas for exporting scrap metal[13]);
- amend customs procedures, technical regulation (standardisation, certification, sanitary and phytosanitary norms; see **Regulation of economic activity**) and other regulatory requirements in accordance with international standards.

Intellectual property

Given the fewer obstacles to the movement of goods and services, IPR protection should be regarded as an important step to trade liberalisation. However, it should also be taken into account that the consequences of enhancing the IPR protection system in Ukraine will be uneven. In the short run, consumption of intellectual property products will drop through their increased costliness. Nevertheless, in the long run Ukraine will be able to reap the benefits of WTO membership and, thus, stimulate the establishment of national intellectual property.

During the last 12 months, a number of amendments aimed at enhancing IPR protection have been entered into legislation. The most important was the adoption of the

[11] See **Policy Studies** No. 14 for more on the consequences of Ukraine's accession to the WTO (December 2000), p. 30.

[12] See **Quarterly Predictions,** April 2001, p. 44.

[13] See **Policy Studies,** No. 14 (December 2000), p. 32.

Law of Ukraine dated 11 July 2001 "On amending the Law of Ukraine 'On copyright and allied rights'", which is a framework document in the sphere of the protection of copyright and allied rights and is coordinated with the draft Tax Code. In our opinion, the major positive amendments to the law are the following:

- harmonising the standards set forth in the law with the Berlin convention on the protection of literary and artistic works and the convention on protecting the interests of producers of recordings from illegal reproduction dated 29 October 1971, both of which Ukraine has joined;

- enhanced protection of copyrights and allied rights: (1) expanded list of violations which provide grounds for court protection, and also a list of methods for civil and court protection of these rights (in particular, temporary protection measures before filing a lawsuit or before reviewing a case according to the TRIPS[14]); (2) clearly defined responsibility for failure to adhere to copyright agreements; (3) increased protection of copyrights of software applications and databases.[15]

We consider unreasonable the granting of excessive authority to the Cabinet of Ministers of Ukraine in this area. Pursuant to the law, the CMU stipulates the amount of remuneration for using audio and video recordings, for alienation of property rights for recordings (a/v), and the procedure and terms of payment. This norm violates the requirements of the World Organisation on Intellectual Property, according to which the amount of remuneration and terms of payment are fixed in agreements between end-users of audio and video recordings and non-governmental organisations which control the rights of recording manufacturers and artists.

Among the other normative steps aimed at reducing violations in the IPR sphere, the following should be mentioned:

- prohibition of the sale of audiovisual products and recordings without control marking, and defining the rules for production, storage, and sales of control markings and for the marking itself (see resolutions of the Cabinet of Ministers of Ukraine dated 16 November 2000 "On amending the Regulations on the retail sale of copies of audiovisual works and recordings" and "On the approval of provisions on distributing copies of audiovisual works and recordings" dated 13 October 2000). These innovations introduce an easily enforceable tool to control the sales of pirated products;

- strengthening criminal responsibility for the illegal production, marketing, and usage of objects of intellectual property (see the Law of Ukraine dated 5 April 2001 "On amending certain legislative acts of Ukraine aimed at increasing the responsibility for violation of rights for objects of intellectual property rights" and Table 3). At the same time, we think that the amount of the fine is still too low to pose high risks for the pirating activity and reimburse the expenses from the illegal sale of products of intellectual property.[16]

[14] Trade-Related Aspects of Intellectual Property Rights.

[15] In particular, unrestricted reproduction of a single copy of software programs is permitted only under the following condition: such a copy is designated for archiving or replacing the purchased one with its legal copy in case the original is lost, destroyed, or proven to be unfit for usage (formerly, it was possible to reproduce a copy of the program to use "on a certain computer according to its purpose").

[16] IFPI (International Federation of the Phonographic Industry) data for 2001 reveal that the monthly expenses of Ukrainian consumers for audio cassettes and CDs amount to $3 million.

We believe that the following additional legislative amendments should be enacted: (1) adopt the Civil Code, which will ensure the framework regulation of IPR; and (2) join the international convention on protecting the rights of artists, recording producers, and broadcasting organisations, as well as the copyright agreement of the World Organisation of Intellectual Property.

Despite the dramatic improvement of legislative IPR regulation, the number of violations of these rights in Ukraine has hardly dropped. The "Regulations on retailing of copies of audiovisual works and recordings" prohibit the sale of audiovisual works without control holograms, and also distribution through kiosks, vendors stands, or in the markets. Nevertheless, these products are sold virtually without any restrictions. We single out the following main causes of the current situation:

- Lack of interest in IPR protection among the general public. In order to gain public support on issues of IPR protection, citizens should be made aware of the long-term benefits of Ukraine's accession to the WTO and the establishment of national intellectual property;

- Lack of effective mechanisms to implement necessary legislative acts. In order to partially solve this problem, the CMU appointed working groups to conduct comprehensive auditing of business entities that are engaged in the sale of audiovisual works (see the Directive of the Cabinet of Ministers of Ukraine dated 26 July 2001 "On certain issues of the sale of copies of audiovisual works and recordings"). We consider it advisable to establish separate agencies as units of the Ministry of Internal Affaires of Ukraine and Security Service of Ukraine to deal with IPR violations (this action is envisaged in the Decree of the President of Ukraine dated 27 April 2001 "On measures to protect intellectual property in Ukraine"), which would help to boost the responsibility of law-enforcing agencies.

Customs procedures

Over the last 12 months, the Verkhovna Rada failed to adopt a new Customs Code,[17] having adopted it on 12 July 2001 only in second reading. The key issue not yet agreed upon is the scope of duties of the State Customs Service, specifically; whether it will be equalled in status to law-enforcing agencies. Entrusting the State Customs Service with such a scope of authorities is a rather common worldwide practice; therefore, we believe that such measures will optimise customs control in Ukraine. We may expect the Verkhovna Rada to adopt the new Customs Code after having clarified controversial issues, i.e., the Verkhovna Rada will grant more authority to the State Customs Service and withdraw the norms inconsistent with extant legislation.

Foreign trade liberalisation demands simplified procedures for border crossing. An important step in this direction was the creation of the unified customs tariffs—the list of import duty rates. This list has been systematised according to the detailed (10-digit) classification of goods pursuant to the Law of Ukraine dated 5 April 2001 "On customs tariffs in Ukraine".

Thanks to the new classification, which meets EU standards, the transaction expenses of entities engaging in foreign trade have diminished. Moreover, this innovation grants the authority to set and modify import duty rates only to the Verkhovna Rada. We believe that this amendment will allow to raise the awareness of foreign traders regarding the forms and scope of tariffs and customs control, and also allows these entities to plan their activities better.

Pursuant to the Law of Ukraine dated 12 July 2001 "On amending the Law of Ukraine 'On

[17] The draft Customs Code was adopted in first reading on 13 May 1998. For an evaluation of the new draft Customs Code, see **Policy Studies** No. 14 (December 2000), p. 35.

enforcing a single customs duty collected at national border check-points of Ukraine'", charging a single duty at national border check-points will speed up customs control and reduce costs. The revised version of the law differs from the previous one by setting a single customs duty for different types of vehicles. This amendment will allow the enactment of this law without waiting for final decisions on all by-laws pertaining to it.

Openness for capital flows

Countries with transitional economies often resort to restraining international capital flows, substantiating this policy by the need to preserve independence of monetary policy under conditions of a fixed or strictly controlled currency exchange rate. Among the negative repercussions of imposing restrictions on capital flows are worsened investor expectations and the threat of a decrease in both undesirable and desirable financial transactions, as well as huge expenditures on administration and the risk of delaying necessary reforms in the financial market.

Compared to other countries of Central and Eastern Europe, Ukraine is regarded as being relatively closed for capital flows in the economy. The main hindrances for international capital mobility are the obligatory sale of 50% of hard-currency revenues of exporters and the necessity of licensing most residents' transactions at the NBU (opening accounts abroad, purchase of foreign securities, transactions with derivatives and other instruments, granting loans to foreigners, performing foreign direct investments, purchase of real estate abroad, etc.). Throughout the past year, no noteworthy changes in the direction of increased financial openness have taken place.

When imposing restrictions on capital flows in Ukraine, the following goal is put forward: to secure currency-market stability and prevent capital outflows. We believe that these measures are justified only for the transition period, and in future the NBU will have to gradually discontinue them.

Openness for labour force movement

Most countries are less open for labour force movement than they are for goods circulation and capital flows. Immigration of labour forces from less developed countries adversely affects the interests of the local labour force because of the decline in wages and increased unemployment rates countrywide, which in turn trigger social conflicts. For its part, Ukraine has also raised barriers to the movement of labour forces, some of which we regard as being excessive.

For example, according to the Cabinet of Ministers of Ukraine Resolution dated 1 November 1999 "On adopting the procedure for issuing foreigners and individuals without citizenship employment permits to work in Ukraine", an employment permit can be issued to a foreigner under the following conditions: (1) there are no workers in the country able to perform a certain type of work; (2) sufficient justification is submitted regarding usage of the services of foreign specialists. This may cause serious abuses of power when issuing permits.

Minor amendments aimed at eliminating barriers to entering the country were introduced into legislation during the past year. The Decree of the President of Ukraine "On additional measures on exercising the human right to freedom of movement and free choice of the place to live" is expected to facilitate the entry of foreigners to Ukraine. According to this decree, foreigners entering Ukraine in accordance with the established procedures, and their identity documents, will only be registered at the national border check-points; further registration

at internal affairs agencies (the infamous "VVIR") is no longer required.

Furthermore, according to the Directive issued by the Cabinet of Ministers of Ukraine on 28 May 2001, "On measures for further simplification of formalities related to crossing the national border by individuals and transport vehicles", certain procedures for filling out documents at the border were simplified: checking the existence of medical insurance and filling out declarations for private vehicles have been discontinued. We believe that these changes will stimulate the growth of the tourism sector in Ukraine.

Table 3. Criminal responsibility for IPR violations

Type of violation	1960 Criminal Code		2001 Criminal Code	
	Definition	Penalty	Definition	Penalty
Violation of copyright and allied rights for objects of industrial property "in large quantities".[18]	–	Correctional work for a period of up to 2 years, or a fine of 50 to 120 minimum wages[19] (for less than large quantities, the penalty is 30 minimum wages).	More than 100 "nontaxable minimums".[20]	Fine of 100 to 400 "nontaxable minimums" or correctional work for up to 2 years, with the seizure of all copies of counterfeit products, equipment, and materials for its manufacture.
Repeat violations or "in particularly large quantities".	–	–	More than 1,000 "nontaxable minimums".	Fine of 200 to 800 "nontaxable minimums" or correctional work for up to 2 years, or probation for up to 2 years with seizure of all copies of counterfeit products, equipment, and materials for its manufacture.
Violation of copyright and allied rights committed by a government official.	–	–	–	Fine of 500 to 1,000 "nontaxable minimums", or arrest for a period of up to 2 months, or probation for up to 2 years, with deprivation of the right to hold certain positions or engage in certain activities for 3 years.

Source: Criminal Code of the USSR dated 28 December 1960, Criminal Code of Ukraine dated 5 April 2001.

[18] The Criminal Code did not include a classification of penalties in accordance with the degree of aggravation (less than large quantity, "large quantity", and "particularly large quantity").

[19] The minimum [monthly] wage is currently 118 UAH.

[20] The "nontaxable minimum" currently constitutes 17 UAH.

Financial sector

Ukraine's financial system should stimulate the more effective allocation of resources in the economy and promote growth. Flaws in the system can slow down business activity, and not only because of the possible inability of enterprises and households to make transactions or obtain loans, but also through the erosion of confidence in official institutions and increased pessimistic expectations. Over the past 12 months, the Verkhovna Rada of Ukraine adopted the following laws crucial for the financial sector: "On financial services and the state regulation of financial services markets", "On payment systems and money transfers in Ukraine", "On the circulation of bills in Ukraine", and "On banks and banking activity"

In our opinion, Ukraines's financial sector is characterised by the following features:

- relatively low level of financial mediation; in particular, the volume of loans to the private sector and deposits constitutes only 10–12% of GDP;
- lack of proportion in the development of the banking and non-banking sectors, with approximately 90% of the financial market being accounted for by banking operations.

The Ukrainian system of regulating the financial sector and monitoring its development is still in the making. We have distinguished the following weaknesses in the national policy regarding Ukraine's financial sector:

- Sector players and representatives of regulatory agencies lack an overall picture of the sector's development. A certain internal development logic can be traced in particular segments of the sector, e.g., banks and the stock market. However, they sometimes lack coordination and consistency, which significantly restricts development of the financial sector in general;
- Independent institutions regulating and supervising financial sector development are weak or absent, and have inadequate capability to resist political pressure.

In order to be able to avoid unwanted risks and, at the same time, to stimulate financial market development, objectives and principles of state regulation of the financial services market need to be clearly set, authorities distributed among state agencies, and mechanisms created for their coordination.

We consider the Law of Ukraine dated 12 July 2001 "On financial services and the state regulation of financial services markets" to be an attempt to solve these problems. This law affirms the NBU's authority to regulate banking services, and the authority of the State Commission on Securities and the Stock Market regarding securities and derivative securities. In other financial services markets, a specially authorised executive body in the sphere of regulation of financial services markets will perform regulating functions. In accordance with the law, financial institutions are classified as banks, credit unions, pawnbrokers, leasing companies, trust funds, insurance companies, pension savings institutions, investment funds, and companies and other legal entities, whose sole activity is rendering financial services.

We believe that the mentioned law will have a positive influence on financial sector development, as it creates the following advantages:

- The clear definition of financial terms and types of financial services will make market players' activities increasingly more transparent, facilitate supervision, and eliminate the possibility of ambiguous interpretation of terms by parties;

- Delegation of regulatory and supervisory authority over "non-banking and non-stock" financial services to a single agency will give the possibility to apply common principles of regulation, and thus reduce risks in financial services markets. Apart from this, when only a single agency operates in the market and clear principles are determined, potential clients will have more confidence in the institutions rendering the abovementioned services.

We believe that a weakness in the new regulating system is uncertainty over the terms of creating (determining) the authorised body and beginning of its actual regulatory activity. We think that during the first years of its operation, the authorised body will focus its efforts primarily on an inventory of markets and companies pertaining to them; therefore, it is not worthwhile anticipating a rapid increase in the volume of operations.

Despite the declared delegation of authority among three supervisory bodies, conflicts are still highly likely regarding accountability, since some financial market players (e.g., banks) can engage in activity that is beyond the NBU's scope of influence and is within the competence of some other authorised body. Therefore, effective mechanisms for the interaction of supervisory bodies, especially for those cases where their responsibilities overlap, must be developed and implemented.

Taking into account all the above-said, we expect that in future the issue of creating a unified regulatory and supervisory body for the financial market will surface. Potentially attractive features of this system would be increased responsibility, economy of resources, and possibility to track sector risks on the consolidated basis.

The Law "On payment systems and money transfers in Ukraine" dated 5 April 2001 has become an important normative instrument for the operation of Ukraine's financial market. This document consolidated a great number of current norms, replacing a lot of by-laws. Though among the subjects of the law are primarily banks, whose rights and obligations regarding payment systems are already clearly defined, the creation of non-banking payment systems is also envisaged by this law. The law clearly determines the banks' responsibility for money transfers; the penalty for violation of the terms of client orders constitutes 0.1% of the amount of the money transfers per day. A greater flexibility in determining the transaction date (now clients can do it themselves) will attract more economic agents to use money transfer services.

Adoption of the Law of Ukraine "On the circulation of bills in Ukraine" dated 5 April 2001 was the culminating point in Ukraine's accession to the three Geneva bill conventions of 1930 (on implementation of the unified law on transfer bills and common bills, on settling inconsistent laws on transfer bills and common bills, and on stamp duty for transfer bills and common bills). The conventions include empty sections for adding national peculiarities which have finally been approved. Previously, the circulation of bills was regulated by the National Bank of Ukraine, the Ministry of Finance, the State Commission on Securities and the Stock Market, and the State Tax Administration. Normative acts issued by different institutions have sometimes been inconsistent. At the same time, because of a lack of coordination, a lot of gaps have been identified. The lack of a consolidated normative structure has resulted in the creation of different financial

and trade schemes, which have given the opportunity to minimise taxes and rather often are bill schemes only in name and not in essence.

This new law meets the requirements of worldwide practices in the circulation of commodity bills. According to this law, bills can only be used to write off money debts for actually delivered goods, work performed, or services rendered. The law does not foresee the existence of financial bills. We believe that this fact may reduce the amount of non-transparent payment schemes.

Banking sector

The revised version of the Law "On banks and banking activity" adopted by the Verkhovna Rada on 7 December 2000 has become a key normative act in the Ukrainian banking sector. The law envisages a systematic approach to the creation, operation, reorganisation, and liquidation of banks. We believe that thanks to the legislative endorsement of formerly diverse normative acts, banking regulation will stabilise.

The law introduces a number of new approaches to bank regulation, namely:

- The NBU has been granted more authority to supervise banking activities. Now, the NBU supervisory authority covers not only banks, but also affiliated companies and subsidiaries. Such a consolidated approach to supervision requires a more thorough risk evaluation for particular banks and the banking system in general. If a bank violates legislation, the NBU shall be entitled to resort to various kinds of punitive measures, ranging from imposing penalties on officials to their dismissal, appointing an *ad hoc* administration, and adopting a decision to liquidate the bank;

- The protection of client rights has been increased. Now, every bank is obliged to submit a financial status report upon client demand; this will make them more confident when making choices, as they will be better informed. The law introduces and specifies the concept of a banking secret, and it also specifies cases when it is permitted to disregard this confidentiality clause. Information about the accounts of legal entities and individuals (private entrepreneurs) which constitutes a banking secret can be disclosed if the bank receives a written inquiry from the prosecutor's office, the Security Service of Ukraine, the Ministry of Internal Affairs, or the State Tax Administration. In all other cases, the law permits to disclose information about the banking transactions of individuals only by court decision;

- The protection of bank's rights has been increased; no agency has the right to block the bank's correspondent account (all transactions on the account). Therefore, the risk to the activity of the bank itself will decrease;

- Entering the banking business has been made easier. The revised version of the law does not contain requirements anymore regarding the maximum share for a single shareholder of the bank. The law permits to expand the range of banking structures according to their aspects, in particular, to include cooperative banks and banking associations. This will help to attract large loan deposits and speed up the implementation of new technological types of services, the development of which wholly depends on the concentration of resources;

- Bank status has been more clearly defined. The law incorporates precise definitions of state and specialised banks, and banks with foreign capital, and introduces differentiated requirements as to a bank's minimum capital (depend-

ing on location, territory, or sphere of activity). Thanks to the concrete definition of bank status, the NBU can now implement regulations (particularly, establish standards) taking into account the peculiarities of a particular bank's activity and the risks that a given bank poses for the banking system;

- The approach to licensing banks has been modified. Formerly, the NBU licensed only particular banking transactions; from now on, all banking activity is to be licensed, which entitles the bank to obtain funds, issue loans, and maintain accounts;

- A new mechanism for liquidating banks has been implemented. The NBU can appoint an *ad hoc* administration to manage bank's affairs for a year. If the NBU declares the bank insolvent, it will withdraw the license and initiate the liquidation process. According to the law, the liquidation procedure is to take place over a period of not more than 3 years starting from the date of the license withdrawal. Collateralised claims, and claims of the Fund of Secured Deposits of Individuals (up to 500 UAH per depositor) have the priority to be satisfied first. Thereafter, it is necessary to pay out severance to dismissed banking employees, reimburse expenses pertaining to the liquidator's work, and compensate losses resulting from health and life injuries of individuals. Only then, the claims of individual depositors (amounts of over 500 UAH) should be satisfied, and claims which resulted from obligations to employees. Thereafter, other claims can be satisfied.

The mentioned law envisages many changes in the regulation of banking activities that require time and resources, not only on the part of commercial banks, but also on the NBU's part. Therefore, on 7 March 2001, the NBU Board adopted the resolution "On determining the transitional terms of execution of the requirements of the Law of Ukraine 'On banks and banking activity'", which delayed the entering into effect of certain norms of the law over a specific period. The last to come into effect will be the demand on banks to submit the consolidated accounting report (this norm will come into effect on 17 July 2003). We believe that this transitional period will result in decreased bank expenses required to adjust their activities to new standards.

Over the past year, the obligatory reserves ratios were reduced from 15% to 9–14% for different types of deposits (on average, by 1.7 percentage points). We believe that the higher obligatory reserves ratios combined with a decline of long-term deposits, deposits in national currency, and deposits of individuals will lead to the increase of these liabilities in the breakdown of attracted funds. On the other hand, cheaper resources for commercial banks will result in lower loan interest rates for economic entities.

The revised version of the Provisions "On the procedure for creating obligatory reserves for banks", approved by resolution of the NBU Board on 27 June 2001, does not permit banks to use obligatory reserves (i.e., to perform unsanctioned credit emissions for payment). In each case of failure to comply with the norms of obligatory reserves, in accordance with the Law of Ukraine "On banks and banking activity", penalties will be imposed onto banks, and the amount of the penalty will be deducted from the amount of income. We believe that these innovations will affect the banking sphere in the following way:

- Discipline of commercial banks will increase, and this will enable the NBU to regulate the money supply more accurately through the instrument of obligatory reserves;

- Banks will have more incentives to use refinancing tools more actively, contributing to the development of market-based instruments of the monetary policy.

Thanks to the centralised database of bad debtors, the creation of which is envisaged by the resolution of the NBU Board dated 27 June 2001 "On creating a unified information system for registering loan-holders (debtors)", the quality of the banks' credit portfolio will increase and credit activity risks will diminish. We believe that attracting banks as much as possible to this information system will be the guarantee of success of this undertaking.

Stock market

Over the last 12 months, among the legislative acts pertaining to the stock market, the Law of Ukraine dated 15 March 2001 "On institutions for mutual investing (share and corporate investment funds)" (hereinafter – IMI) is the one worthy of attention. We believe that thanks to this law, which is a step forward in the protection of investors' interests, the Ukrainian market is becoming more civilised.

Along with today's investment funds, designated to work with vouchers in the privatisation process, the law introduces a number of new models of institutions aimed to attract citizen and enterprise funds and to operate in the financial market, particularly, the stock market. For example, the venture investment fund, whose investing activities are least restricted, should attract both foreign and domestic investors—legal entities that are prepared to take risks for higher profits and are interested in maintaining the confidentiality of their investments.

The new IMI operating model clearly divides the functions of registrar, custodian, managing company, and securities trader, whereas formerly almost all functions were performed by one company. We think that this change will result in reduced risks for clients, though expenses may increase.

The Presidential Decree dated 26 March 2001 "On additional measures for development of the stock market in Ukraine" determines the main objectives for stock market development in Ukraine for 2001–2005, which were worked out by the strategic group together with different market players. The document is aimed at centralisation of the market, concentration of contracts for shares of strategic enterprises in the organised market, and increased transparency of issuer activities.

We expect risks to emerge in the process of the decree's implementation:

- Failure to take into account market players' interests. For example, on 20 April 2001, the State Commission on Securities and the Stock Market, having agreed the issue with the NBU but failing to consult market agents, approved the Regulations "On registering ownership rights of non-residents for securities of Ukrainian issuers". According to these regulations, only the custodians can deal with transactions of non-residents in the Ukrainian securities market. Thus, approximately 80 out of over 800 dealers and banks in Ukraine (only those who have the custodian's license) can deal with non-residents, and among them only 11 are banks. Besides, registration of ownership rights of non-residents for securities of Ukrainian issuers which circulate on the territory of Ukraine can only be performed by the custodians who are clients of the depository. Thus, the State Commission of Securities and the StockMarket banned 350 registrars from dealing with non-residents;

- Lack of integration among legislative acts. The mentioned Regulations were adopted without amending other normative acts of the commission; and this may increase risks when concluding agreements in the market.

We believe that the 1991 Law "On securities and the stock market", which is the framework for the stock market, should be revised. The draft law "On securities and the stock market", which was to replace it, was removed from the agenda of the parliament in summer 2001. We expect the law to be adopted in 2002. The parliament would do well to review the draft law as soon as the Tax Code is adopted, as this law also pertains to taxation of stock market transactions (see **Tax policy**).

Ownership relations and privatisation

Effectiveness of corporate governance in Ukraine is declining due to the lack of an adequate legislative base regulating the activity of companies and ownership relations. Although the legislative base for privatisation in Ukraine has remained stable for two consecutive years (a fact that boosts investor confidence), due to the poor enforcement of norms and the allowance of exceptions to the general rules, the situation is worsening

Corporate governance

Effectiveness of corporate governance in Ukraine is declining through the lack of an adequate legislative base regulating the activity of companies and ownership relations.

In the process of development of a new legislative base, the paramount issues are the adoption of the Civil Code and the Law "On joint-stock companies". We expect that the final version of the Civil Code will be adopted by the end of the year 2001. Evidently, it is hardly worth expecting the adoption of the Law "On joint-stock companies" in the near future; it is supposed to replace the corresponding section of the 1991 Law "On economic associations", as the law was removed from the parliamentary agenda after first reading in 2001. This process has slowed down because of the indistinct prospects of adoption of the Economic Code and the general risk of decline in legislative activity of the parliament before and after the election [in March 2002].

In addition, the low effectiveness of state corporate governance hampers any overall improvement in corporate governance. After the liquidation of the National Agency for State Corporate Governance and the reassignment of these duties back to the State Property Fund of Ukraine (SPFU), the procedures of state property management have not improved. Over the past year, no positive changes have taken place in the legislative base regarding state property management. The draft law "On management of objects of state property" has been removed from the agenda of the parliamentary sessions, regardless of the fact that it passed first and second reading.

The fact that the Law "On the State Property Fund of Ukraine" has not been adopted yet aggravates the situation. The SPFU operates on the basis of a 1991 cabinet resolution[21] and a 1992 resolution of the Verkhovna Rada.[22] Over the last 12 months, the parliament has made several attempts to adopt the Law "On the State Property Fund of Ukraine", but the President has sent it back to be revised every time. The main reason for the deviations in their viewpoints lies in the inability of the different arms of government to reach an agreement as to whom exactly the SPFU will be accountable and subordinated. Meanwhile, a number of urgent issues have not been resolved yet; in partic-

[21] Cabinet of Ministers of Ukraine Resolution dated 19 August 1991 "Regarding the State Property Fund of Ukraine".

[22] Verkhovna Rada of Ukraine Resolution dated 7 July 1992 "On the Temporary Regulations of the State Property Fund of Ukraine".

ular, regarding the SPFU authority regulating corporate governance. On 20 September 2001, the Verkhovna Rada adopted a revised version of the Law "On the State Property Fund of Ukraine". Pursuant to the law, the SPFU is controlled by and accountable to the Verkhovna Rada, but is subordinated to the Cabinet of Ministers regarding the management of entities subject to ownership rights. Only 1 out of the President's 13 proposals was adopted by the Verkhovna Rada; therefore, it is highly probable that the President will veto the law once more.

Given these circumstances, the government worked out a "Concept of the state corporate and dividend policy". Among the noteworthy features of the document are the implementation of a system of planning for financial results through the approval of financial plans of state-accountable companies, and also setting well-defined requirements for ongoing formation of a dividend fund during a year. This document, however, has not been approved yet.

As for holding companies, a Presidential directive and attempts made by the government to review their feasibility have produced no positive results so far. Meanwhile, there is no news either as to the process of state property management, with state managers having no incentives to perform their duties effectively because the majority of shares belong to the state.

The loss of control over state property by the government has led to a number of scandals over the sale of electric power stations, shares of mining and enriching works, the oil export terminal, and the biggest tire producer in Ukraine. In April, the President temporarily suspended the privatisation process of the energy sector and submitted to the Verkhovna Rada a draft Law "On declaring a moratorium on the compulsory sale of property", which prohibits the alienation of state property and the state corporate rights for debts. On 21 September 2001 the Verkhovna Rada failed to override the presidential veto on this law. The President did not agree with the deputies' decision to ban the privatisation of the energy companies for the next year.

Nevertheless, these measures do not radically solve the problem; on the contrary, they aggravate it. We believe that if the law is adopted, the period of the moratorium should be used to enhance state corporate governance and solve the debt problem of enterprises that are undergoing privatisation.

Under these conditions, the best strategy for state property management is to speed up privatisation. However, during the last 12 months, the list of objects of state companies not subject to privatisation was not notably shortened.

Privatisation

Adoption of the State Privatisation Program for 3 years[23] (2000–2002) was useful; the legislative base for Ukrainian privatisation has been stable for 2 consecutive years already, and this has boosted investors' confidence in Ukraine. Meanwhile, the Law "On the State Privatisation Program" is still flawed, including weak compliance and approval of exceptions to the general rules.

The State Property Fund has never executed the norms of the program for the cheap sale or abandonment of minority shares (not exceeding 25% of the charter capital) by the state; although they do not allow influencing enterprise activities, the state-owned shares hamper market incentives and prompt corruption among managers of state corporate rights. Regarding the duties of such officials, the SPFU proposes to change in the program the soft wording 'may', to the rigid 'obliged', as this will allow them less discretion in decision making.

[23] Law of Ukraine dated 18 May 2000 "On the State Privatisation Program".

The most noteworthy example of an exception to the general privatisation rules was the Law of Ukraine dated 2 November 2000 "On the privatisation particularities of the Mariupol Illich Metallurgical Plant". This document was inconsistent with the State Privatisation Program and, under the conditions of competitive sale, formally granted the priority right to purchase plant shares to the plant's staff (actually, to the chief of the plant). We believe that the sale price stipulated in the law was much lower than it should be.[24] In general, such documents undermine investors' confidence in the consistency of the privatisation processes in Ukraine.

Another example of deviation from the general privatisation principles was the adoption of the CMU resolution on the additional issue of shares of the state Ukreximbank. We believe that the process of identifying a strategic investor in accordance with the scheme adopted by the government does not comply with the principles of openness and competition.

Privatisation processes in the energy sector that have occcurred over the last 12 months prove how crucial the need is to coordinate the policy of attracting strategic investors to a particular industry, through its denationalisation, with the policy of state regulation of the sector. In spring 2001, six oblast energy distributing companies were sold, thanks to the adoption of amendments to the Law "On electricity" in summer 2000, and, later, on 20 April 2001, as well as the government directive "On the system of measures aimed at creating favourable conditions for energy sector development", declaring the need to undertake responsibilities towards strategic investors. The directive, however, is not being observed, and hence the temporary suspension of privatisation tenders of other oblenergos.

As for the Ukrtelekom privatisation, it will succeed only if the policy of attracting strategic investors is coordinated with the policy of sector reformation, and if the Law "On telecommunications", which is to regulate the most complex issues of the sector's development, is adopted before the privatisation is launched.

[24] This plant, which generated profits of 531 million UAH in only six months, was sold to its staff for 450 million UAH.

Sectoral regulation

Agriculture

Ukraine's national policy in the sphere of agricultural regulation is now facing two tasks. The first one is to implement the necessary legislative instruments to ensure effective enforcement of land ownership rights in accordance with the Constitution. The second task is to create favourable conditions to raise agricultural output and ensure its further independent development. At the end of Q3'01, the first task had not been accomplished yet. Meanwhile, the state authorities focused their efforts on bolstering agricultural output. More and more attention is being paid by the government to measures aimed at dealing with the so-called free-market failures, particularly to avert excessive price fluctuations on agricultural products and promote the development of selected sectors of agriculture. But the resolution of policy failures at the state level—namely, a feeble legislative base, lack of a coordinated state policy in the sector, and insufficient protection of the basic ownership rights of rural people—is being put on the back burner.

In 2001, the government failed to resolve the major problems of the legislative base. Legislation regulating the agricultural sector continues to be elaborated without the proper involvement of a wide range of politicians and experts from other sectors. This brings about the adoption of legislative acts which are inconsistent with extant legislation. The process of deciding on crucial issues is being held back, as the Verkhovna Rada often wastes time on constantly amending the laws and resolutions, and also on refining them even after having put these instruments into practice.

Changes which took place during 2001 entail mostly a series of contradictory actions for promoting agricultural development, ranging from granting tax benefits to the direct interference of the state in price formation mechanisms. Some strategic progress has taken place, however, in the reformation of ownership rights.

Promoting agricultural development

The key legislative change for the rural economy was the adoption on 18 January 2001 of the Law of Ukraine "On promoting agricultural development for the period 2001–2004", which sets forth the main actions of the state in support of agriculture. This law again endowed the sector with priority status. Regardless, we consider a positive feature of this legislation to be the legal approval of a number of decisions, resolutions, and decrees pertaining to the state support of lending mechanisms in agriculture, regulation of price formation processes, insurance, and ensuring future revenues. The above decisions were not coordinated before the adoption of the law. In addition, the law lifted the moratorium on the bankruptcy of agricultural enterprises that was in effect since January 2000.[25]

Although this law brought forward some positive changes, the majority of its provisions have again proved to be merely declarative. Quite a few laws and by-laws required for the enforcement of this law have still not been developed. Moreover, some sections of the law are inconsistent with each other and with extant legislation. Table 4 provides more details on these and other state actions.

[25] The moratorium was declared pursuant to the Law of Ukraine dated 30 November 1999 "On amending the Law of Ukraine 'On bankruptcy'".

Table 4. Measures to boost agricultural production envisaged in the Law of Ukraine "On promoting agricultural development for the period 2001–2004"

Measure	Problem being solved	Implementation mechanism	Comments
1. Improved stability of the legislative base.	Unexpected changes in regulation slow down agricultural development, due to the high risks for investors.	Not established.	Establishment of a civilised decision-making process will stabilise the legislation and increase its predictability.
2. Extension of the validity of the special terms for VAT payment by agricultural businesses till 1 January 2004.	This measure can artificially boost business profitability.	VAT remains at the disposal of agricultural businesses, but it should be calculated and included in the product price.	It does not boost the sector's effectiveness compared to other sectors.
3. Support of scientific research.	Next to zero investments in scientific research.	State program for development and support of the seed fund, ways to protect animals, plants, etc.	The 2001 budget allocated extremely scanty resources for such needs.
4. Support of the market infrastructure.	The market is unable to promptly provide the substantial investments required for the establishment of infrastructure.	Establishment of a system of exchanges and export mechanisms for agricultural products.	We believe that the problem of executing state decisions at the regional level is most acute. Regional authorities often block market mechanisms.
5. Stabilisation of prices on grain.	Due to the low technical level of agricultural machinery, grain production greatly depends on natural factors, and this triggers excessive price fluctuations.	A pledge price system for grain was established.	The current system hardly influences the market, due to the following reasons: 1) no funds for pledge purchases; 2) pledge prices remain at a low level. Measures taken by the regional authorities to control grain flow have a negative effect on stability.
6. Support of the production of sugar from sugar beets.	Domestic beet sugar is more expensive than imported cane sugar.	Import quota on raw cane sugar. Keeping the price for sugar and beets at levels higher than the market.	Support of sugar beet production is not justified, as there are more effective ways of utilisation of public funds.

Measure	Problem being solved	Implementation mechanism	Comments
7. Enforcement of the requirement to utilise Ukrainian tobacco in generic brand cigarettes.	Ukrainian tobacco is not competitive compared to imported tobacco.	Not developed.	It is inconsistent with the principles of free competition.
8. Support of lending in the agricultural sector.	Great risks are associated with lending in agriculture.	Interest rate compensation.	For now, this method is the most effective, as it does not distort the functioning of the market mechanism in the sector; however, as with any other method, it does not protect from rent-seeking and other abuses.
9. Stimulating the development of advisory services.	Small agricultural producers are often limited in their access to advisory services. Establishment of these services requires substantial investments.	A clear mechanism has not been determined so far.	
10. Stimulating the development of leasing activity.	High price for agricultural equipment.	State leasing fund was established.	There are problems with the financing of this leasing fund.

We believe that the existing tools of state policy are, for now, unable to enforce a well-coordinated programme of agricultural development. Therefore, the actions of the state are anticipated to remain chaotic until the end of the year 2001.

Lifting the moratorium on bankruptcy

We believe that the most important change in the sector was the lifting of the moratorium on bankruptcy of agricultural enterprises, pursuant to the Law "On promoting agricultural development for the period 2001–2004".

The existence of the moratorium on bankruptcy did not permit to initiate proceedings to declare the bankruptcy of agricultural enterprises, and actually banned liquidating them. Such regulation did not allow the creditors of insolvent enterprises to redeem at least some part of their money by resorting to the procedures of debtor liquidation and sale of its assets. After the moratorium was lifted, the risks of lending to agricultural enterprises diminished. In addition, it has stimulated more diligent management. Now, when enterprises are liquidated their managers will be dismissed and that is another incentive—an administrative one.

Improvement of the system of ownership rights fulfilment

As of September 2001, the Verkhovna Rada had passed the draft Land Code only in first reading. Therefore, further reform of legal relationships in agriculture has stalled.

The adoption of the Land Code is a prerequisite for enacting the Law "On mortgage" that was approved by the Verkhovna Rada in first reading on 5 October 2000. Implementation of this act requires the existence of a free land market. The mentioned law is to become the basis for granting commercial bank loans, collateralised by land or other immovable property, to agricultural producers.

Over the past 12 months, the following normative acts have been passed:

- Presidential Decree "On measures to secure the protection of ownership rights of rural people in the process of reforming the agricultural sector of the economy", and the corresponding the Cabinet of Ministers Resolution.[26] These documents resolved some controversial issues which surfaced during the reform of the agricultural sector. In particular, a new method to assess the value of land shares was developed, and a number of flaws which hampered the reforms were eradicated. The new method significantly reduced the risks of the owners of land shares of being defrauded by local authorities, and bolstered the confidence of rural people in the government's ability to proceed with reforms;

- Presidential Decree "On key objectives of land reform in Ukraine in 2001–2005" is for the most part a political document and does not envisage specific measures. This legislative act aims at speeding up the adoption of the Land Code and creating a freely functioning land market in agriculture. The above decree demonstrates the executive's strong commitment to proceed with reforms of the agricultural sector.

Tariff regulation in the energy sector

The scheduled privatisation of oblast energy distributing companies (oblenergo) had lacked clear definition of the "rules of play" in the market of electricity transmission and supply. According to the previous mechanism of tariff regulation, tariffs were administratively (a.k.a. "manually") defined in resolutions issued by the National Electricity Regulation Commission, an independent regulatory body in the sector. The "Temporary methods of calculating retail tariffs for consumed electricity, for the transmission of electrical energy by local electric power stations and tariffs for electricity supply", which were approved by the NERC on 6 May 1998, actually set new tariffs in response to energy distributing companies' request, in case such justification of expenditures was submitted.

These procedures of tariff adjustment demanded frequent (almost monthly) interference in market activity, and they were unsuccessful. Therefore, the NERC resolution dated 2 April 2001 introduced new methods of tariff calculation for electricity transmission and supply. Implementation of these methods demands that energy supplying companies meet the following requirements:

- concluding contracts with the state-owned enterprise Energorynok on restructuring the debts for non-payment of electricity fees;

- executing current obligations towards Energorynok to secure 100% payment for electricity purchased in the wholesale market of Ukraine.

The basis of the regulation is a restriction of the rate of profitability, which is calculated according to the tariffs for electricity transmission and supply. Profitability of invest-

[26] Measures were specified and prepared for implementation in the Resolution of the Cabinet of Ministers dated 28 February 2001.

ments in the charter capital (purchase of shares) and investments in production are to be calculated. These methods envisage restrictions of maximum profitability at the level of 25%, though tariffs must secure not less than 17% of profitability;

The retail tariff on electricity is made up of an average retail price, adjusted to the level of expenses, and tariffs for electricity transmission and supply of local power supply networks. Expenditures include normative technological expenses and contingency expenditures (larceny, inaccurate stock-taking, etc.).

The methods envisage the existence of a grace period for accounting of excess electricity expenditures. However, energy distributing companies do not have direct incentives to diminish energy losses (particularly, by means of enhancing of administrative functions, accounting, and control), and this may lead to overstating of such expenses.

Change in the level of expenses can be officially justified by inflationary processes (expenditures on wages), fluctuations of currency exchange rate (import component of expenditures), and legislative changes. Thus, there are a lot of opportunities for tariff indexing; and, on the other hand, the risk of the multiplier effect or inflation surges should not be left unheeded.

Regulation of profit norms usually results in redundant capital formation and declines in economic productivity.

Thus, the new regulations grant more freedom to those electricity distributing companies which fulfil their obligations towards energy suppliers, and also set precise terms of tariff calculation. This approach is more effective and objective compared to the previous one.

However, we believe that such regulations do not offer enough incentives to boost the productivity of electricity distributing companies (particularly, their incentives to overstate expenditures). They do not implement firm control mechanisms, meanwhile they set the stage for increased non-productive expenditures.

List of evaluated legislation

Regulation of economic activity			
Law of Ukraine	"On amending certain legislative acts of Ukraine aimed at implementing state control over lottery activity"	dated 21.09.2000	No. 1969-III
Law of Ukraine	"On the state support of small business"	dated 19.10.2000	No. 2063-III
Law of Ukraine	"On the National Program of stimulating small business in Ukraine"	dated 21.12.2000	No. 2157-III
Law of Ukraine	"On amending certain laws of Ukraine on the state regulation of the production and sales of ethyl, cognac, and fruit spirits, alcoholic beverages, and tobacco products"	dated 11.01.2001	No. 2209-III
Law of Ukraine	"On amending the Law of Ukraine 'On the foundations of urban planning'"	dated 08.02.2001	No. 2257-III
Law of Ukraine	"On confirming compliance"	dated 17.05.2001	No. 2406-III
Law of Ukraine	"On the accreditation of compliance assessment agencies"	dated 17.05.2001	No. 2407-III
Law of Ukraine	"On standardisation"	dated 17.05.2001	No. 2408-III
Law of Ukraine	"On pre-school education"	dated 11.07.2001	No. 2628-III
Law of Ukraine	"On financial services and the state regulation of financial services markets"	dated 12.07.2001	No. 2664-III
Presidential Decree	"On protecting documents and goods with holographic protective elements"	dated 15.11.2000	No. 1239/2000
Cabinet of Ministers Resolution	"On the term of validity of licenses to conduct certain types of economic activity, fees, and payment procedure for their issue"	dated 29.11.2000	No. 1755
Cabinet of Ministers Resolution	"On approving the Regulations on the procedure for holographic protection of documents and products"	dated 24.02.2001	No. 171
Cabinet of Ministers Resolution	"On amending Cabinet of Ministers of Ukraine Resolution No. 1755 dated 29 November 2000"	dated 16.05.2001	No. 515
Cabinet of Ministers Resolution	"On approving the list of supplementary documents attached to the application to obtain a license to conduct a certain type of economic activity"	dated 04.07.2001	No. 756

Tax policy			
Code	"Criminal Code of Ukraine"	dated 5.4.2001	No. 2341-III
Law of Ukraine	"On amending the Law of Ukraine 'On the value-added tax'"	dated 14.09.2000	No. 1955-III
Law of Ukraine	"On amending Article 9 of the Law of Ukraine 'On the Slavutych Special Economic Zone'"	dated 5.10.2000	No. 2013-III
Law of Ukraine	"On the 2001 State Budget of Ukraine"	dated 7.12.2000	No. 2120-III
Law of Ukraine	"On amending the Law of Ukraine 'On obligatory state social insurance against accidents at work and occupational diseases which result in professional disability'"	dated 21.12.2000	No. 2180-III
Law of Ukraine	"On the procedure for redeeming taxpayers' liabilities towards budgets and state targeted funds"	dated 21.12.2000	No. 2181-III
Law of Ukraine	"On the special mode of investment activity in priority development territories and the Port Krym Special Economic Zone in the Autonomous Republic of Crimea"	dated 21.12.2000	No. 2189-III
Law of Ukraine	"On amending certain legislative acts of Ukraine on tax issues with regard to the introduction of a special mode of investment activity in priority development territories, and the establishment of the Port Krym Special Economic Zone in the Autonomous Republic of Crimea"	dated 21.12.2000	No. 2199-III
Law of Ukraine	"On the amount of contributions to certain types of obligatory state social insurance"	dated 11.01.2001	No. 2213-III
Law of Ukraine	"On amending the Law of Ukraine 'On the value-added tax'"	dated 18.01.2001	No. 2233-III
Law of Ukraine	"On obligatory state social insurance in case of temporary professional disability and expenses incurred due to birth or death"	dated 18.01.2001	No. 2240-III
Law of Ukraine	"On insurance tariffs for obligatory state social insurance against accidents at work and occupational diseases which result in the professional disability"	dated 22.02.2001	No. 2272-III
Law of Ukraine	"On the Transcarpathia Special Economic Zone"	dated 22.03.2001	No. 2322-III

Law of Ukraine	"On amending certain laws of Ukraine on tax issues with regard to the establishment of the Mykolaiv Special Economic Zone"	dated 22.03.2001	No. 2323-III
Law of Ukraine	"On amending the Cabinet of Ministers Decree 'On excise'"	dated 22.03.2001	No. 2324-III
Law of Ukraine	"On the special mode of investment activity on the priority development territory in Volyn oblast"	dated 5.4.2001	No. 2354-III
Law of Ukraine	"On amending certain laws of Ukraine on taxation issues with regard to the establishment of the special economic zone in Volyn oblast"	dated 5.4.2001	No. 2355-III
Law of Ukraine	"On amending the Law of Ukraine 'On promoting agricultural development for 2001–2004'"	dated 7.6.2001	No. 2514-III
Law of Ukraine	"On amending certain legislative acts of Ukraine"	dated 7.6.2001	No. 2515-III
Cabinet of Ministers Resolution	"On the maximum amount of actual expenditures for labour remuneration of hired employees, non-taxable income, total taxable income (marginal sum) of wages (income), from which insurance inputs (duties) to social funds can be deducted"	dated 7.3.2001	No. 225
Judicial reform			
Law of Ukraine	"On amending the Law of Ukraine 'On the judiciary of Ukraine'"	dated 21.06.2001	No. 2531-III
Law of Ukraine	"On amending the Procedural Code of Ukraine"	dated 21.06.2001	No. 2533-III
Law of Ukraine	"On amending the Law of Ukraine 'On the status of judges'"	dated 21.06.2001	No. 2534-III
Law of Ukraine	"On amending the Law of Ukraine 'On bodies of judicial self-government'"	dated 21.06.2001	No. 2535-III
Law of Ukraine	"On amending the Law of Ukraine 'On expert committees, qualificatory attestation, and disciplinary responsibility of court judges of Ukraine'"	dated 21.06.2001	No. 2536-III
Law of Ukraine	"On amending the laws of Ukraine 'On the militia', 'On imprisonment before trial', and 'On the administrative supervision of individuals released from prison'"	dated 21.06.2001	No. 2537-III
Law of Ukraine	"On amending the Law of Ukraine 'On the arbitration court'"	dated 21.06.2001	No. 2538-III

Law of Ukraine	"On amending the Arbitration Code of Ukraine"	dated 21.06.2001	No. 2539-III
Law of Ukraine	"On amending the Civil Code of Ukraine"	dated 21.06.2001	No. 2540-III
Law of Ukraine	"On amending the Law of Ukraine 'On the prosecutor's office'"	dated 12.07.2001	No. 2663-III
Law of Ukraine	"On amending the Procedural Code of Ukraine"	dated 12.07.2001	No. 2670-III
Protection of economic competition			
Law of Ukraine	"On the protection of economic competition"	dated 11.01.2001	No. 2210-III
Open economy			
Law of Ukraine	"On amending certain legislative acts of Ukraine regarding increased responsibility for violation of rights for objects of intellectual property rights"	dated 5.04.2001	No. 2362-III
Law of Ukraine	"On the customs duty of Ukraine"	dated 5.04.2001	No. 2371-III
Law of Ukraine	"On amending the Law of Ukraine 'On copyright and allied rights'"	dated 11.07.2001	No. 2627-III
Law of Ukraine	"On amending the Law of Ukraine 'On the introduction of a single duty collected at national border checkpoints of Ukraine'"	dated 12.07.2001	No. 2659-III
Presidential Decree	"On measures to protect intellectual property in Ukraine"	dated 27.04.2001	No. 285/2001
Presidential Decree	"On additional measures to exercise the right of individuals to freedom of movement and free choice of the place of living"	dated 15.06.2001	No. 435/2001
Cabinet of Ministers Resolution	"On approving the Regulations on distributing copies of audiovisual works and recordings"	dated 13.10.2000	No. 1555
Cabinet of Ministers Resolution	"On amending the Regulations on retail sales of copies of audiovisual works and recordings"	dated 16.11.2000	No. 1715
Cabinet of Ministers Directive	"On measures to further simplify formalities of crossing the national border by individuals and vehicles"	dated 28.05.2001	No. 228-p
Cabinet of Ministers Directive	"On certain issues regarding the sale of copies of audiovisual works and recordings"	dated 26.07.2001	No. 310-p
Financial sector			
Law of Ukraine	"On banks and banking activity"	dated 7.12.2000	No. 2121-III

Law of Ukraine	"On institutions of mutual investment (share and corporate investment funds)"	dated 15.03.2001	No. 2299-III
Law of Ukraine	"On payment systems and money transfers in Ukraine"	dated 05.04.2001	No. 2346-III
Law of Ukraine	"On the circulation of bills in Ukraine"	dated 05.04.2001	No. 2374-III
Law of Ukraine	"On financial services and state regulation of the financial services market"	dated 12.07.2001	No. 2664-III
Presidential Decree	"On additional measures to stimulate stock market development in Ukraine"	dated 26.03.2001	No. 198/2001
Cabinet of Ministers Resolution	"On approving measures for the implementation of major objectives to develop the stock market for 2001–2005"	dated 14.08.2001	No. 1046-2001-п
Resolution of the NBU Board	"On establishing transitional terms for executing the requirements of the Law of Ukraine 'On banks and banking activity'"	dated 7.03.2001	No.102
Resolution of the NBU Board	"On approving the Regulations "on the procedures for formation of bank required reserves"	dated 27.06.2001	No.244
Resolution of the NBU Board	"On establishing the unified information system of accounting loanholders (creditors)"	dated 27.06.2001	No.245
Decision of the State Commission on Securities and the Stock Market	"On approving the Regulations on accounting non-residents' property rights for securities of Ukrainian issuers"	dated 20.04.2001	No. 0488-01
Property relations and privatisation			
Law	"On the particularities of privatising the state shares in the charter capital of the Mariupol Illich Metallurgical Works open joint-stock company"	dated 02.11.2000	No. 2085-14
Law	"On amending the Law of Ukraine 'On the list of objects of state property rights not subject to privatisation'"	dated 12.07.2001	No. 2657-14
Cabinet of Ministers Resolution	"On extending the charter capital of the State Export-Import Bank of Ukraine joint-stock company"	dated 28.12.2000	No.1926-2000-п
Presidential Directive	"On the Commission on Inspection of the Establishment, Privatisation, and financial and Economic Activity of State (national) joint-stock and Holding Companies"	dated 21.04.2001	No. 114/2001-рп

Cabinet of Ministers Directive	"On the system of measures aimed at creating favourable conditions to promote energy sector development"	dated 07.04.2001	No. 133-2001-p
Agriculture			
Law of Ukraine	"On the redemption of debts on budget loans granted to state-owned and other agricultural enterprises of all types of ownership and economic activity through servicing, procurement and processing enterprises, and restructuring of debts on taxes and duties (obligatory payments) of processing enterprises of the agricultural complex"	dated 18.01.2001	No. 2237-III
Law of Ukraine	"On promoting agricultural development for 2001–2004"	dated 18.01.2001	No. 2238-III
Law of Ukraine	"On amending the Law of Ukraine 'On writing off debts for payment of taxes and duties (obligatory payments) of taxpayers due to the reformation of agricultural enterprises'"	dated 18.01.2001	No. 2239-III
Law of Ukraine	"On the agreements of alienating land plots (shares)"	dated 18.01.2001	No. 2242-III
Law of Ukraine	"On amending the Law of Ukraine 'On payment for land'"	dated 08.02.2001	No. 2271-III
Law of Ukraine	"On importing raw cane sugar to Ukraine in 2001"	dated 29.05.2001	No. 2462-III
Law of Ukraine	"On amending the Law of Ukraine 'On promoting agricultural development for 2001–2004'"	dated 07.06.2001	No. 2514-III
Presidential Decree	"On measures to stabilise the consumer market and to develop livestock breeding for 2001–2002"	dated 17.02.2001	No. 100/2001
Presidential Decree	"On additional measures to further promote leasing in the agricultural sector of the economy"	dated 23.02.2001	No. 111/2001
Presidential Decree	"On measures to improve the functioning of sales markets of food and non-food products"	dated 23.05.2001	No. 334/2001
Presidential Decree	"On the main objectives of land reform in Ukraine for 2001–2005"	dated 30.05.2001	No. 372/2001
Presidential Decree	"On measures to develop the food market and promote the export of agricultural output and foodstuffs"	dated 07.08.2001	No. 601/2001
Cabinet of Ministers Resolution	"On organising the production of domestic means of plant protection"	dated 24.01.2001	No. 42

Cabinet of Ministers Resolution	"On the complex program to promote soil melioration and improve the ecology of irrigated and drained land plots for 2001–2005, and to make a forecast for 2010"	dated 16.11.2000	No. 1704
Cabinet of Ministers Resolution	"On measures to replenish the state leasing fund in 2001"	dated 16.02.2001	No. 155
Cabinet of Ministers Resolution	"On resolving issues of securing the property rights of rural people in the process of reforming the agricultural sector of the economy"	dated 28.02.2001	No. 177
Cabinet of Ministers Resolution	"On approving the program to prevent and eradicate symptoms of bovine spongiform encephalopathy (BSE) and other prion protein infections in horned cattle on the territory of Ukraine for 2001–2010"	dated 28.02.2001	No. 179
Cabinet of Ministers Resolution	"Certain issues of state regulation of the production and marketing of the sugar beet harvest in 2001"	dated 01.03.2001	No. 201
Cabinet of Ministers Resolution	"On the state support mechanism for grain crop prices"	dated 23.04.2001	No. 371
Cabinet of Ministers Resolution	"On amending Cabinet of Ministers Resolution No. 271 dated 26 February 1999"	dated 23.04.2001	No. 374
Cabinet of Ministers Resolution	"On partial compensation of interest rates of commercial bank loans granted to agricultural producers and other enterprises of the agricultural complex in 2001"	dated 23.04.2001	No. 377
Cabinet of Ministers Resolution	"On certain issues regarding the state department of veterinary medicine"	dated 08.06.2001	No. 641
Cabinet of Ministers Resolution	"On the mechanism of regulating imports of raw cane sugar in 2001"	dated 27.06.2001	No. 731
Cabinet of Ministers Resolution	"On measures to stabilise and promote livestock breeding and poultry breeding for 2001–2004"	dated 11.07.2001	No. 799
Cabinet of Ministers Resolution	"On amending Cabinet of Ministers of Ukraine Resolution No. 59 dated 27 January 2001"	dated 23.07.2001	No. 857
Cabinet of Ministers Resolution	"On approving the program to develop means of animal protection based on modern technologies for 2001–2005"	dated 08.08.2001	No. 948

Order of the Ministry of Agricultural Policy of Ukraine	"On amending Order No. 139 of the Ministry of Agricultural Policy dated 11 September 2000 'On approving the Regulations pursuant to Cabinet of Ministers of Ukraine Resolution No. 1148 dated 20 July 2000 'On measures to enhance the regulation of the grain market''"	dated 20.02.2001	No. 32
Order of the State Tax Administration	"On amending the Procedures for writing off debts on taxes and duties (obligatory payments) of taxpayers conducted by state tax agencies as of 1 May 2000 due to reformation of agricultural enterprises"	dated 14.03.2001	No. 104
Energy Sector			
Resolution of the National Electricity Regulation Commission	"On approving the Procedures for tariff setting for electricity transmission by local electric networks, and tariffs for electricity supply for licenseholders, with electricity supply at the regulated tariff"	dated 2.04.2001	No. 309

The journal **POLICY STUDIES** was established by the International Centre for Policy Studies in January 1999. **POLICY STUDIES** presents the results of policy research carried out by ICPS consultants, partners, and other think tanks in Ukraine and the intellectual community.

This publication is supported by a contract from the Center for International Private Enterprise in Washington, D.C.

Editor of **POLICY STUDIES**: Maksym Mashliakivsky
English version editor: Tetiana Verbytska
Copy editor: D. (Ksenia) Ovcharenko

Our special thanks for assistance and advice go to the staff and consultants of ICPS.

Printed in Ukraine by Pekotoff-print

Address of the International Centre for Policy Studies:
8/5 Voloska St., Kyiv 04070, Ukraine

Tel. +380-44-463-6337. Fax +380-44-463-5970.

E-mail: mmax@icps.kiev.ua Web: www.icps.kiev.ua/publications/eng/ps

For more information on subscribing to this and other ICPS publications, please contact Yevhenia Yehorova at marketing@icps.kiev.ua, tel. +380-44-463-6337.

THE INTERNATIONAL CENTRE FOR POLICY STUDIES is an independent non-profit research organisation whose mission is to promote and facilitate the improvement of policy development process in Ukraine. This is achieved by increasing the know-how of key government officials regarding policy alternatives, formulation, and debate, and teaching the public-at-large the benefits of policy. ICPS focuses on key programs of importance for the reform efforts of the Ukrainian government. The director of ICPS is Dr. Vira Nanivska.